Supreme Court, U.S.
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No.

In the Supreme Court of the United States

OCTOBER TERM, 1997

UNITED STATES OF AMERICA, PETITIONER

v.

CHRIS W. BEGGERLY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether an "independent action" brought against the United States to set aside a consent judgment entered in a previous quiet title action brought by the United States may be premised on "ancillary jurisdiction" deriving from the original quiet title action, and does not require an independent jurisdictional basis including a waiver of sovereign immunity.

2. Whether the 12-year statute of limitations applicable to actions against the United States under the Quiet Title Act, 28 U.S.C. 2409a(g), was subject to equitable tolling.

3. Whether the court of appeals had appellate jurisdiction to review the district court's denial of respondents' motion for summary judgment.

4. Whether the court of appeals erred in reopening the consent judgment and upholding respondents' claim of title to lands in the State of Mississippi based on a 1781 land grant by a Spanish governor who, as this Court held in ~~*United States v.*~~ *United States* v. *Power's Heirs*, 52 U.S. (11 How.) 570 (1851), had no authority to make such a grant.

PARTIES TO THE PROCEEDING

Petitioner is the United States of America. Petitioner was defendant in the district court and appellee in the court of appeals. The respondents, Chris W. Beggerly, Clark M. Beggerly, Velma B. Garner, Suzanne Reed, and David Reed, were plaintiffs in the district court and appellants in the court of appeals.

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PETITION FOR A WRIT OF CERTIORARI

The Acting Solicitor General, on behalf of the United States of America, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The court of appeals' substitute opinion rendered on rehearing (App., *infra*, 1a-16a), from which review is sought, is reported at 114 F.3d 484. The initial decision of the court of appeals (App., *infra*, 17a-31a) is unreported. The district court's memorandum order granting the government's motion to dismiss and denying respondents' motion for summary judgment (App., *infra*, 32a-44a) is unreported, as is the district court's memorandum order denying rehearing (App., *infra*, 47a-51a).

JURISDICTION

The court of appeals entered its initial judgment and decision on May 29, 1997. The court of appeals thereafter replaced that decision with a new decision on July 28, 1997, and concurrently denied a petition for rehearing. App., *infra*, 52a-53a. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISION AND RULE INVOLVED

Reprinted in an appendix to this petition (App., *infra*, 61a-63a) are the pertinent provisions of the Quiet Title Act, 28 U.S.C. 2409a, and Federal Rule of Civil Procedure 60(b).

STATEMENT

1. a. This case arises out of a dispute between respondents and the United States over ownership of lands on Horn Island, Mississippi. Horn Island is one of five barrier islands off the Mississippi coast in the Gulf of Mexico (R.E. 32),[1] and is within the territory acquired in 1803 by the United States in the Louisiana Purchase. *United States* v. *Louisiana*, 363 U.S. 1, 80-81 (1960); *Garcia* v. *Lee*, 37 U.S. (12 Pet.) 511 (1838).

After the Louisiana Purchase, Congress established a commission to ascertain the titles and claims to lands east of the Pearl River in Mississippi, west of the Perdido River in Alabama, and south of the 31st degree of north latitude, an area that includes Horn Island. Act of Apr. 25, 1812, ch. 67, 2 Stat. 713. The 1812 Act required every person claiming lands in that area under French, British,

[1] Cites to "R.E." refer to pages in respondents' appendix of record excerpts filed in the court of appeals. "Supp. R.E." refers to the supplemental appendix of record excerpts filed in the court of appeals by the government. Cites to "R." refer to pages in the official record on appeal.

and Spanish grants to deliver evidence of the claim to the Commissioner, who was directed to examine the claims; to ascertain, *inter alia*, whether and when the lands were inhabited or cultivated, and when and under what authority they were surveyed; and to prepare a report on the claims for Congress. §§ 5, 7, 8, 2 Stat. 715, 716. In 1819, Congress confirmed the claims that were recommended by the Commissioner and directed the issuance of certificates and patents for the confirmed claims. Act of Mar. 3, 1819, ch. 100, §§ 1-2, 3 Stat. 528-530. No claims for lands on Horn Island were recommended by the Commissioner or confirmed by Congress; to the contrary, in 1816, the Commissioner specifically rejected a claim to Horn Island by the heirs of one Catalina Boudreau. See p. 5, *infra*.[2] In 1844, Congress permitted persons with claims to lands east of the Pearl River, among others, "which might have been perfected into a complete title" under a prior sovereign's laws, to file suit in federal district court to substantiate such claims, with a right of direct appeal to this Court. Act of June 17, 1844, ch. 95, 5 Stat. 676; Act of May 26, 1824, ch. 173, § 1, 4 Stat. 52.[3] Neither party to this case has suggested that any lands on Horn Island were so claimed.

[2] Congress twice permitted persons whose claims had not been recommended for confirmation by the Commissioner to present additional supporting evidence (Act of Mar. 3, 1819, ch. 100, §§ 6-7, 3 Stat. 530-531; Act of May 24, 1828, ch. 93, 4 Stat. 299), and it subsequently confirmed several claims (Act of May 8, 1822, ch. 128, 3 Stat. 707; Act of May 28, 1830, ch. 146, 4 Stat. 408). We are unaware of any claims recommended or confirmed for lands on Horn Island.

[3] The 1844 Act extended, to lands east of the Pearl River in Mississippi, provisions of the 1824 Act that had allowed those claiming lands in Arkansas and Missouri to petition the district court for recognition of their claims. See Act of May 26, 1824, ch. 173, 4 Stat. 52. Section 5 of the 1824 Act, and by incorporation the 1844 Act as well, provided that "any claims to lands * * * within the purview of this act, which shall not be brought by petition before the said courts,

Since the early 1800s, the United States has openly acted as owner of Horn Island. The government's first official plat survey for Horn Island, conducted in 1824, identified the island as public domain, as did a subsequent official dependent resurvey conducted in 1846, and a supplemental plat survey in 1907. R.E. 70. Dependent resurveys conducted in 1928[4] and 1979 showed that the United States had issued no patents for any lands on Horn Island before the 1907 survey, and that no patent had ever been issued for the Horn Island lands claimed by respondents. R.E. 71. In addition, since the mid-1800s, the United States Government has issued a series of Executive Orders and Public Land Orders providing for the public use of lands at issue here and other lands on Horn Island, including use for military and lighthouse purposes, a chemical warfare station, a Coast Guard target range, and a wildlife refuge.[5]

b. Respondents' predecessor in interest, Clark Beggerly, Sr., purchased color of title to the lands at issue here, as well as other lands, by quitclaim deed at a delinquent tax sale offered by Jackson County, Mississippi, in 1950. Mr. Beggerly, Sr., paid $51.20 for 626 acres described as located on Horn Island; he and a friend also paid $31.25

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within two years from the passing of this act, * * * shall be forever barred, both at law and equity, and no other action, at common law, or proceeding in equity, shall ever thereafter be sustained in any court whatever, in relation to said claims." 4 Stat. 54.

[4] The resurvey conducted in 1928 reflected significant accretions and accordingly redesignated the lot numbers within the sections. R.E. 71.

[5] See Exec. Order of Aug. 30, 1847; Exec. Order of July 7, 1852; Exec. Order of Sept. 3, 1900; Exec. Order of Apr. 12, 1906; Exec. Order No. 4262 (July 3, 1925); Exec. Order No. 5562 (Feb. 20, 1931); Exec. Order No. 10,355, 17 Fed. Reg. 4831 (1952); Public Land Order No. 1636, 23 Fed. Reg. 3388 (1958).

for another 225 acres on the Island, of which he retained 103 acres upon later division. App., *infra*, 32a-33a.

In 1971, Congress created the Gulf Islands National Seashore (GINS) for preservation purposes, and authorized the Secretary of the Interior to acquire several Gulf Coast islands, including Horn Island. See 16 U.S.C. 459h, 459h-1. In 1972, the National Park Service began appraising lands within the boundaries of GINS, including some lands on Horn Island, as an initial step toward acquisition of properties. The 626-acre parcel claimed to be owned by respondents was appraised for $156,000, and the 103-acre parcel was appraised for $27,125. The Park Service offered respondents slightly larger amounts than those appraised values for the lands they claimed, conditioned on their delivery of clear title to the parcels. The government's title contractor, however, found no evidence that the United States had ever issued any patents for the property claimed by respondents. In the absence of clear title, the government did not further pursue purchase of the property from respondents. R.E. 68.[6]

In 1979, the United States filed suit against respondents and nearly 200 other defendants to quiet title in the United States to lands claimed by private persons on Horn Island, Petit Bois Island, and Ship Island. *United States of America* v. *Adams, et al.*, Civil Action No. S79-0338(C) (D. Miss.). For three years, the parties conducted research

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[6] Respondents originally maintained that their title derived from federal patents that had been issued to Indians in 1840 and recorded in the 1950s in the Jackson County Chancery Clerk's Office by an attorney acting for the 1950 tax-sale purchasers. See R.E. 75. Preliminary research by the government's title contractor suggested that respondents' title was derived from three patents issued to Indians in 1840, but subsequent research revealed that those Indian patents had in fact been issued for different lands in northeastern Mississippi, and that no patents had ever been issued for Horn Island. R.E. 68; R. 199.

and discovery on their claims. During that litigation, the United States filed a pleading that, among other things, referred to a claim to Horn Island that had been rejected by the land commission established by Congress in 1812, and contended that that claim therefore provided no basis for respondents' claim to lands on Horn Island. See Mem. in Supp. of Pl.'s Objections to Admis. of Defs.' Exs. at 5-6 (filed 11/19/82); pp. 2-3, *supra*.

That pleading in the *Adams* case identified the source of the information about the rejected claim as the report to Congress on claims east of the Pearl River by Commissioner William Crawford (reproduced in 3 *American State Papers, Public Lands* 7 *et seq.* (1834)). Commissioner Crawford's report to Congress identified a claim by the heirs of Catalina Boudreau[7] to a grant purportedly issued to her on August 1, 1781, by Bernardo de Galvez, then the Governor of the Spanish province of Louisiana. *Id.* at 15 (item 51). Crawford's report also explained that he had rejected the Boudreaus' and several other claims either because they were "forfeited—most of them under the Spanish law, for the want of inhabitation and cultivation; and do not appear to be entitled to confirmation under any law of the United States" (*id.* at 17); or because they were "derived from officers who had no right to grant, or, at most, not on so extensive a scale" (*ibid.*). In 1850, this Court held, in addressing claims to lands on two islands neighboring Horn Island, that, on August 1, 1781, Bernardo de Galvez had no legal authority to issue grants for lands east of the Pearl River. *United States* v. *Power's Heirs*, 52 U.S. (11 How.) 570, 579-580 (1851).[8]

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[7] Variously spelled Catherine, Catarina, and Catalina, and Boudreau, Beaudreaux, Baudreau, Bodro, and Baudro.

[8] As the Court noted in *United States* v. *Louisiana*, 363 U.S. at 80-81, the lands in question were ceded by France to Great Britain in 1763, and were then made part of the British province of West Florida. In 1781, Spain and Great Britain were at war, and the British forces surrendered West Florida to de Galvez on May 9, 1781. The Court concluded in *Power's Heirs* that, although Spain held the relevant lands under military occupation on August 1, 1781, there was no evidence that Spanish law had been introduced into West Florida, or that de Galvez had been given civil power to grant lands there. De Galvez was then the Governor of the Spanish province of Louisiana, but the Court stated that his civil authority did not extend to West Florida. 52 U.S. (11 How.) at 579-580.

In December 1982, respondents and the other defendants to the United States' quiet title suit executed a "Stipulation and Settlement" (App., *infra*, 56a-60a) in which they agreed to accept $400,000 as "full and just compensation and in full satisfaction of any and all claims of whatsoever nature * * * against the United States of America by reason of the settlement of the action" (*id.* at 57a-58a), in return for entry of an attached consent judgment. That consent judgment quieted title "in favor of the United States with regard to all lands and interests on Horn and Petit Bois Islands which defendants have or may have claimed." *Id.* at 54a. The judgment also permanently enjoined the defendants (including respondents herein) from asserting any adverse claim to the property. *Ibid.* As a result of the settlement, respondents received $208,175.87 of the $400,000 paid by the United States. Supp. R.E. tab 3, at 4.

c. Despite the settlement of the quiet title action, respondents continued to investigate their claim to the tax sale parcels. According to an affidavit later filed in this case, Edith Axelson, a researcher hired by respondents, stated that in 1991 she had located in the National Archives documents relating to the "Boudreau Grant." R.E. 126. Axelson attached to her affidavit a copy of materials purportedly documenting an August 1, 1781, grant of Horn Island to Catalina Boudreau by Bernardo de Galvez. R.E.

129-132. In August 1993, respondents hired Hans Baade, a law professor at the University of Texas, to "evaluate and determine the legal effect of * * * the 'Boudreau Grant.'" R.E. 134. Baade's resultant legal "Memorandum on Title to Horn Island" (R.E. 150-189) concluded that the grant to Catalina Boudreau by de Galvez was valid. Baade, however, made no reference to this Court's holding in *Power's Heirs*, 52 U.S. (11 How.) at 579-580, that de Galvez had lacked legal authority to issue grants to lands east of the Pearl River on August 1, 1781.[9] Nor did he address the existence of any chain of title between Catalina Boudreau and respondents.[10]

2. On June 1, 1994, respondents filed a complaint in district court, requesting that the court set aside the 1982 settlement agreement and the consent judgment in the United States' quiet title action, and award them just compensation for an "inverse condemnation" effected by entry of that 1982 consent judgment. See R.E. 29-46 (complaint). Relying on the "Boudreau Grant" (see R.E. 40), the complaint asserted that the United States had fraudulently represented federal ownership of the disputed property on Horn Island (R.E. 42-44); that "mutual mistake of a material fact" had caused respondents to agree to the 1982 settlement (R.E. 44); and that the entry of the 1982 consent judgment constituted a taking of respondents' property without just compensation entitling them to a monetary award by way of inverse condemnation (R.E. 45-46). As relief, respondents sought to have the court set aside the judgment in *Adams* and to award them "damages" of not less than $14,500 per acre, plus interest since 1982. R.E. 45.

[9] Baade also did not address this Court's decision in *United States* v. *Porche*, 53 U.S. (12 How.) 426, 432 (1852), holding that, under the 1844 Act permitting certain claimants to lands east of the Pearl River to present their claims to federal district court, any claims filed after June 17, 1846, were jurisdictionally barred.

[10] As noted above (page 5, note 6, *supra*), respondents originally maintained that their title purchased at the tax sale in 1950 derived from three patents issued to Indians in 1840, but those patents were in fact issued for different lands. We are not aware of any connection between the 1781 Boudreau Grant and the 1840 Indian patents.

In January 1995, the United States filed a motion to dismiss the complaint for lack of jurisdiction. The government contended that there was no statutory basis for jurisdiction, including no waiver of sovereign immunity, for respondents' action to set aside the judgment in the quiet title action. R. 52. Respondents in turn filed a motion for summary judgment in March 1995, asserting that the court had jurisdiction over their "independent action" to set aside the consent judgment based on jurisdiction in the initial quiet title action brought by the United States. Resp. Mem. in Supp. of Mot. for Summ. J. 5, 16, 20-21. In addition, respondents argued (*id.* at 23-24) that both the Quiet Title Act (QTA), 28 U.S.C. 2409a, and the Tucker Act, 28 U.S.C. 1346(a)(2) and 1491(a)(1), provided the district court with jurisdiction over their claims. In July 1995, respondents filed a motion to amend their complaint (R. 190-191) by adding the QTA and the Tucker Act as jurisdictional bases, but they did not otherwise seek to amend the complaint or the relief sought in the complaint; they did not, for example, request that the district court quiet title to the Horn Island lands in *them*.

The district court granted the government's motion to dismiss and denied respondents' motion for summary judgment. App., *infra*, 32a-44a. The court first observed that respondents' complaint was filed nearly 12 years after entry of judgment in the United States' quiet title action, well after the one-year period allowed by Federal Rule of Civil Procedure 60(b) for motions to set aside a final judgment based on fraud. App., *infra*, 39a-41a. The court also

noted that, although respondents had relied on Rule 60(b) in their complaint, they sought relief in their summary judgment motion through an "independent action in equity"; it rejected that basis for relief as "substantively and procedurally deficient," and further concluded that the action was untimely under the equitable doctrine of laches. *Id.* at 40a n.13. The court also ruled that respondents had not met the legal prerequisite for seeking rescission of a settlement agreement, namely, returning the moneys received in settlement and returning the parties to the *status quo ante*; thus, the court concluded, respondents must be "deemed to have ratified the settlement agreement." *Id.* at 41a. The court further rejected respondents' inverse condemnation claim—that the entry of the consent judgment in 1982 constituted a taking of their property for which just compensation was due—on the ground that the Court of Federal Claims had exclusive jurisdiction over that claim under the Tucker Act, 28 U.S.C. 1491. App., *infra*, 42a-43a.

Finally, the court pointed out that a party seeking to set aside a judgment on the basis of fraud faces a "stiff standard of proof," and it observed that respondents had "wholly failed to discuss [their] allegations of fraud in specific terms of the[] critical elements" for making out such a claim. App., *infra*, at 38a-39a n.9; see also *id.* at 39a-40a & n.12 (court's "careful[] review[] [of] the record" establishes that respondents' allegations of fraud are devoid of evidentiary support). Rather, the court found, "[t]he United States acted in good faith in the settlement of [the *Adams* litigation]." *Id.* at 43a. The court remarked that the United States "could have refused to pay for what it already owned"—noting that respondents' own attorneys had advised them at the time that they had no valid claim to the disputed lands—and it characterized the amount respondents had accepted in the *Adams*

settlement as a "'six-figure' windfall." *Id.* at 43a-44a & n.16. Having ruled that the case should be dismissed, the court then denied respondents' motion for summary judgment, without addressing the merits of that motion. *Id.* at 44a.

3. A divided panel of the court of appeals reversed. App., *infra*, 17a-25a. The majority concluded that the district court had erred in dismissing respondents' action for lack of jurisdiction (*id.* at 20a-21a), and it directed the district court on remand to enter judgment quieting title in respondents to Horn Island, and to fashion an appropriate monetary remedy for respondents (*id.* at 25a). Judge Garza dissented. *Id.* at 25a-31a.

4. The United States filed a petition for rehearing. The panel, still divided, issued a "substitute" opinion on rehearing (App., *infra*, 1a-16a), and concurrently issued an order denying the petition for rehearing "[o]ther than as reflected in the substituted opinion" (*id.* at 52a-53a).

a. The majority first concluded that the district court had erred in dismissing the complaint. According to the court, the time limits in Rule 60(b) for setting aside a judgment based on alleged fraud "do[] not 'limit the power of a court to entertain an independent action'" to set aside a judgment. App., *infra*, 4a. Moreover, the majority stated, "an independent action filed in the same court that rendered the original judgment is a continuation of the original action for purposes of subject matter jurisdiction." *Id.* at 4a-5a. Therefore, the court concluded, neither an independent basis for jurisdiction nor a waiver of sovereign immunity is required "to bring an independent action in the same court as the original action." *Id.* at 5a.

The majority then proceeded to address the merits of respondents' independent action to set aside the consent

judgment, and it ordered that relief. App., *infra*, 5a-8a. "Crucial to that determination," the majority stated, was its conclusion that the district court had erred in failing to recognize the validity of the de Galvez grant of Horn Island to Catalina Boudreau in 1781. *Id.* at 6a. The court acknowledged that the document found by Axelson in the National Archives and proffered by respondents to support their claim "is not the original grant," but it concluded that the proffered document was the only available copy, "presumably" because a fire had destroyed the archives where the original would have been stored. *Ibid.* On that basis, the court decided that the English translation of the purported grant was "admissible to prove its existence." *Ibid.*

The majority further acknowledged that a congressionally established commission had rejected the application by Boudreau's heirs to Horn Island, but, it observed, that commission was not given authority to adjudicate title but was required to submit claims to Congress for final action; therefore, "the land commissioner's refusal to accept the [Boudreaus'] application did not conclusively determine that Horn Island belonged to the United States." App., *infra*, 6a-7a. But rather than remand the issue of the validity of the Boudreau Grant to the district court (which had not passed on the question), the court of appeals itself addressed the issue, and concluded—based on Professor Baade's affidavit offered by respondents in support of their motion for summary judgment, which the district court had denied—that "the Boudreau Grant vested complete and valid title in Catarina Boudreau. On that record, therefore, we must conclude that the property at issue herein remained privately owned after the Louisiana Purchase and did not enter the public domain of

the United States" until the settlement of the quiet title action. *Id.* at 8a.[11]

Finally, the majority ruled on what it called respondents' "Quiet Title Act claim" (App., *infra*, 9a-11a). Even though respondents had only raised the QTA as an alternative basis for jurisdiction for their request for damages and vacatur of the consent judgment and had not requested that the district court quiet title in them, the majority read respondents' complaint as stating "alternative causes of action" and held that the district court had jurisdiction to adjudicate title under the QTA. *Id.* at 9a. Moreover, according to the majority, since "the United States has no legitimate claim to the land, the validity of [respondents'] title is a legal certainty," and so title should be quieted in their favor. *Ibid.* The court did not address the United States' open ownership of Horn Island since the Louisiana Purchase, or the absence of any showing by respondents of a chain of title between Boudreau and the 1950 tax sale by which Clark Beggerly, Sr., acquired color of title to the land.

The majority rejected the government's argument that any action by respondents under the QTA to adjudicate title in lands on Horn Island was barred by the statute of

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[11] The majority stated that respondents' "involuntary settlement" of the *Adams* litigation, based on their "inability to prove their title" derived from the Boudreau Grant, was "directly caused by the government's failure to produce the grant and its misrepresentation that no private disposal" (by federal patent of the lands) had ever been made. App., *infra*, 8a. The court did not, however, address the fact that the government had brought the claim of Boudreau's heirs to Horn Island, and the 1816 land commission's rejection of that claim, to the attention of the court in the *Adams* litigation. See p. 6, *supra*. The court also did not consider this Court's *Power's Heirs* decision—holding that de Galvez lacked authority to make grants east of the Pearl River—which Professor Baade had not discussed in his affidavit, and which the parties had not addressed in their briefs on appeal.

limitations, which requires that a quiet title action against the United States be brought within 12 years of the date on which the claim accrues (defined as the date on which the plaintiff or his predecessor in interest knows or should know of the United States' claim to the land). App., *infra*, 9a-10a; see 28 U.S.C. 2409a(g). The majority acknowledged that respondents had brought their action more than 12 years after they knew of the United States' claim to the Horn Island lands, but, it ruled, the QTA's statute of limitations should be tolled in this case "on equitable grounds." App., *infra*, 10a.[12] "On the record before us," the court stated, "the government may not benefit from the limitations period, especially in light of the diligence displayed by [respondents] in seeking the truth and pursuing their rights, which resulted in their discovering a grant that apparently not even custodians of the public land records could or would locate." *Ibid.* Accordingly, the court tolled the QTA's limitation period for respondents' benefit and remanded the case to the district court to enter judgment quieting title in their favor, subject to the United States' election to retain the property and pay respondents just compensation for it. *Ibid.*

b. Judge Garza dissented. App., *infra*, 11a-16a. He concluded that the district court had properly dismissed the case for lack of jurisdiction, because the government had not waived its sovereign immunity to suit. *Id.* at 11a. He disagreed with the majority's conclusion that an "independent action" could be treated as a continuation of the underlying suit with ancillary jurisdiction from the original action, and he suggested that the panel's jurisdictional

[12] The Court noted that respondents knew of the United States' claim to the land by 1976, when the United States ceased negotiating with them over the purchase of the property. App., *infra*, 10a. It did not address when respondents' predecessors in interest knew or should have known of the United States' claim.

ruling was inconsistent with this Court's decision in *Kokkonen* v. *Guardian Life Insurance Company of America*, 511 U.S. 375 (1994), and contrary to decisions of the Ninth and Eleventh Circuits. See App., *infra*, 11a, 12a n.1. Judge Garza also suggested that the majority had erred in reaching "the merits of [respondents'] cross motion for summary judgment, the validity of the Boudreau Grant, or the ownership of Horn Island," since all of those questions were "fraught with difficult fact questions that must be decided by the district court, which alone has jurisdiction to consider them." *Id.* at 16a. Therefore, even if subject-matter jurisdiction were present, Judge Garza would have remanded the case to the district court for further proceedings. *Ibid.*

REASONS FOR GRANTING THE PETITION

The court of appeals has made numerous significant rulings which are in error and which have broad implications for the publicly owned lands of the United States. First, the court concluded that a defendant to a civil action brought by the United States and resolved by a final judgment may bring an "independent action" to set aside that final judgment based solely on the jurisdiction in the initial action, well outside the time for setting aside a final judgment permitted by Federal Rule of Civil Procedure 60(b), and without any independent statutory basis for jurisdiction or waiver of sovereign immunity. That ruling conflicts with the decisions of other courts of appeals and, if left unreviewed, could provide a basis for reopening judgments in innumerable actions brought by the United States and long ago settled or litigated to final judgment. Second, the court ruled that the Quiet Title Act's 12-year statute of limitations for quiet title actions against the United States, 28 U.S.C. 2409a(g), is subject to equitable tolling. That ruling is erroneous and has similarly important implications for the stability of title to federal lands.

Third, the court ruled, on the merits, that the 1781 land grant from which respondents' claim ultimately derives is valid; that decision is directly in conflict with a decision of this Court, *United States* v. *Power's Heirs*, 52 U.S. (11 How.) 570 (1851), and completely ignores other issues concerning the validity of respondents' title. Finally, the court of appeals' decision to reach the merits of respondents' motion for summary judgment on respondents' appeal from the district court's *denial* of that motion presents an important question about the jurisdiction of the courts of appeals, as to which there is a conflict among the circuits. Certiorari is therefore warranted to review the decision of the court of appeals in this case.

1. In reversing the dismissal of the action, the court of appeals concluded that the district court had jurisdiction over respondents' "independent action" to set aside the 1982 consent judgment under its "ancillary jurisdiction," premised on the subject-matter jurisdiction for the original suit, and that there was no need for respondents to invoke an independent source of subject-matter jurisdiction and waiver of sovereign immunity for their suit against the United States. That decision conflicts with decisions of other courts of appeals, which have held that an independent action brought to set aside a judgment requires an independent source of jurisdiction. See *In re Hunter*, 66 F.3d 1002, 1005-1006 (9th Cir. 1995) (rejecting ancillary jurisdiction for independent actions, and holding that, absent diversity or other federal jurisdiction, court lacked jurisdiction over independent action to set aside settlement of bankruptcy case allegedly tainted by fraud); *United States* v. *Timmons*, 672 F.2d 1373, 1378-1379 (11th Cir. 1982) (similar; absent waiver of sovereign immunity, court lacked jurisdiction over action to set aside judgment in condemnation action brought by United States); *Andrade* v. *United States*, 485 F.2d 660, 664 (Ct. Cl. 1973)

(similar; no jurisdiction to set aside settlement of Indian Claims Commission case), cert. denied, 419 U.S. 831 (1974). But see *Weldon* v. *United States*, 70 F.3d 1, 4 (2d Cir. 1995) (holding that independent actions are ancillary to original suit); *Crosby* v. *Mills*, 413 F.2d 1273, 1275 (10th Cir. 1969) (same). That conflict among the courts of appeals on a question of federal jurisdiction warrants resolution by this Court.

The court of appeals' decision would render largely irrelevant Federal Rule of Civil Procedure 60(b)(3), which permits a district court to relieve a party from a judgment based on a showing of fraud. Under Rule 60(b), such a motion to set aside a judgment based on fraud, which is truly ancillary to the original suit, must be made within one year after entry of final judgment. Under the court of appeals' ruling, however, a party could invoke the ancillary jurisdiction of the district court well outside that one-year period and seek to overturn a judgment based on allegations of fraud. The ruling therefore undermines the value of finality of judgments reflected in Rule 60(b) and generally in the law.[13]

That consequence is particularly troublesome in the context of cases such as this one, involving title to real property. This Court has repeatedly observed that "[t]he policies advanced by the doctrine of res judicata perhaps are at their zenith in cases concerning real property, land and water." *Nevada* v. *United States*, 463 U.S. 110, 129 n.10 (1983); see also *Arizona* v. *California*, 460 U.S. 605,

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[13] Rule 60(b) states that "[t]his rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding." But while Rule 60(b) thus confirms that an independent action may be brought outside the one-year period prescribed for motions under Rule 60(b)(3), it does not suggest that such an action may be brought without an independent source of subject-matter jurisdiction.

620 (1983) ("Our reports are replete with reaffirmations that questions affecting titles to land, once decided, should no longer be considered open."). As the Court explained in 1866:

> Where questions arise which affect titles to land it is of great importance to the public that when they are once decided they should no longer be considered open. Such decisions become rules of property, and many titles may be injuriously affected by their change. * * * [W]here courts vacillate and overrule their own decisions * * * affecting the title to real property, their decisions are retrospective and may affect titles purchased on the faith of their stability. Doubtful questions on subjects of this nature, when once decided, should be considered no longer doubtful or subject to change.

Minnesota Co. v. *National Co.*, 70 U.S. (3 Wall.) 332, 334 (1866). See also *Leo Sheep Co.* v. *United States*, 440 U.S. 668, 687 (1979) ("This Court has traditionally recognized the special need for certainty and predictability where land titles are concerned."); *United States* v. *California & Oregon Land Co.*, 192 U.S. 355, 358-359 (1904).

The decision below is also in tension with this Court's decision in *Kokkonen* v. *Guardian Life Insurance Company of America*, 511 U.S. 375 (1994), as Judge Garza observed in his dissent below (App., *infra*, 11a). In *Kokkonen*, the Court held that a district court that had dismissed a case upon settlement by the parties did not have ancillary jurisdiction to enforce the parties' settlement agreement, which was not incorporated into the order of dismissal. Emphasizing that "[f]ederal courts are courts of limited jurisdiction," 511 U.S. at 377, the Court noted that the suit to enforce the settlement agreement was essentially a state-law suit for breach of contract, part of the consideration for which was dismissal of the

earlier suit, and therefore required an independent source of federal jurisdiction, such as diversity of citizenship. See also *Peacock* v. *Thomas*, 116 S. Ct. 862, 867 (1996). So too here, respondents' independent action is in effect a suit for monetary relief and an injunction based on allegations of fraud, and to go forward it requires an independent source of federal jurisdiction and waiver of sovereign immunity, neither of which is present.[14]

2. The majority did not merely conclude that the district court had jurisdiction to set aside the original judgment quieting title in the United States; it further held that the district court had jurisdiction to quiet title *in respondents' favor* under the Quiet Title Act (QTA), even though respondents' action was concededly filed more than 12 years after they knew of the United States' claim to the disputed lands, and was therefore outside the QTA's 12-year statute of limitations, 28 U.S.C. 2409a(g).[15] The court held that the QTA's 12-year limitation period was subject to equitable tolling. App., *infra*, 10a. It also ruled that the limitation period should be tolled in this case. *Ibid.* The question whether the QTA's limitation period is subject to equitable tolling is one of considerable importance to the management of federal lands, and the court's ruling on tolling is erroneous.[16]

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[14] Even if the district court had jurisdiction to entertain an independent action, the court of appeals had no basis to order that the prior consent judgment be set aside. See note 18, *infra*.

[15] Section 2409a(g) provides: "Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States."

[16] The Ninth Circuit has also held that the QTA's statute of limitations is subject to equitable tolling. *Fadem* v. *United States*, 52 F.3d 202 (1995), vacated and remanded, 117 S. Ct. 1103 (1997). In

The QTA is the sole mechanism by which a party may bring the United States into court to force an adjudication of a title dispute involving land in which the United States claims an interest. See *Block* v. *North Dakota*, 461 U.S. 273, 275-276 (1983). The QTA is, moreover, addressed to an important aspect of the sovereignty of the United States, the ownership of property, which is subject to the plenary control of Congress. See U.S. Const. Art. IV, § 3, Cl. 2 (Congress has power "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States"); *United States* v. *City and County of San Francisco*, 310 U.S. 16, 29-30 (1940). Suits under the QTA therefore implicate the core of sovereign immunity. See *Dugan* v. *Rank*, 372 U.S. 609, 620 (1963) (a suit is against the sovereign if "the judgment sought would expend itself on the public treasury or domain"); cf. *Idaho* v. *Coeur d'Alene Tribe of Idaho*, 117 S. Ct. 2028, 2040 (1997) (observing that Indian Tribe's suit against state officers was "the functional equivalent of a quiet title action which implicates special sovereignty interests"). Because of the special significance of publicly owned lands for the sovereignty of the United States, it is particularly important that title to those lands not be clouded or unsettled, beyond the permissible reach of title litigation that Congress has expressly authorized in the QTA itself.

Fadem, the United States filed a petition for a writ of certiorari, suggesting that the Court hold the petition pending *United States* v. *Brockamp*, 117 S. Ct. 849 (1997), which presented a similar question about equitable tolling of the statute of limitations for tax refund claims. After the Court concluded in *Brockamp* that the tax refund limitation period was not subject to equitable tolling, it vacated the Ninth Circuit's decision in *Fadem* and remanded the case for further consideration in light of *Brockamp*. 117 S. Ct. 1103 (1997). On remand, the Ninth Circuit reinstated its earlier decision. 113 F.3d 167 (1997).

The court's holding that the QTA's limitation period is subject to equitable tolling, if left unreviewed, could have serious consequences for the stability of title in federal lands. When Congress was considering legislative proposals that led ultimately to enactment of the QTA, a concern was expressed that the United States would become subject to stale claims to publicly owned lands, as to which any defense would be difficult because of the passage of time.[17] To avoid that problem, "Congress intended to foreclose totally any suit on claims that accrued more than 12 years prior to the [1972] effective date of the QTA." *Block* v. *North Dakota*, 461 U.S. at 286 n.23; see also *United States* v. *Mottaz*, 476 U.S. 834, 843 (1986) (QTA's "limitations period is a central condition of the consent given by the Act"). But if that limitation period is held subject to tolling, then the government could be forced frequently to defend its ownership of lands long believed to be definitively settled. In this case, for example, the United States has openly acted as owner of Horn Island since 1803, and there had been no attempt on the part of a private party to assert ownership to the Island as against the United States since 1816, yet now the court of appeals has directed that title be quieted in respondents.

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[17] When Congress in 1972 considered waiving sovereign immunity to quiet title actions, the Executive Branch urged that the Act be applied prospectively only (*i.e.*, not to claims that might have accrued prior to enactment). See *Block* v. *North Dakota*, 461 U.S. at 283. Ultimately, Congress and the Executive Branch agreed to a relatively generous 12-year statute of limitations, but recognized that the 12-year period would foreclose the revival of stale claims. Congress and the President concluded that the 12-year statute of limitations was a reasonable accommodation of private parties' interests in the adjudication of title disputes against the United States and the need to avoid the serious disruption of federal programs that might be caused by lawsuits involving long-dormant land disputes.

The majority erroneously relied on this Court's decision in *Irwin* v. *Department of Veterans Affairs*, 498 U.S. 89 (1990), for the proposition that the statute of limitations for actions brought under the QTA may be equitably tolled. App., *infra*, 10a & n.19. In *Irwin*, the Court held that actions against a federal agency under Title VII of the Civil Rights Act of 1964 are subject to equitable tolling, and stated that "the same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States." 498 U.S. at 95-96. *Irwin*, however, involved a federal cause of action that may be brought against private parties as well as federal agencies, and well before *Irwin* the Court had held that the limitation period for bringing suit against a private employer was not jurisdictional but was subject to equitable tolling. See *Zipes* v. *Trans World Airlines, Inc.*, 455 U.S. 385 (1982). The Court concluded in *Irwin* that it would be anomalous to construe the identical provision as strictly jurisdictional when applied to the United States as a defendant, but not when applied to other defendants.

No such anomaly arises from applying the statute of limitations strictly in cases under the QTA, whereas anomalies do arise from a holding that the limitation period is subject to equitable tolling. First, the QTA does not provide any mechanism for resolving disputes among private parties as to land ownership; unlike the statute at issue in *Irwin*, the QTA has no application to defendants other than the United States. Thus, the QTA does not present the anomaly that would have existed in *Irwin* had the case been decided the other way—namely, permitting equitable tolling in suits against private parties but rejecting such tolling in suits based on the same statute brought against the federal government.

Second, the text of the QTA strongly suggests that Congress did not intend the statute of limitations to be subject to equitable tolling. The Court spoke in *Irwin* of a "rebuttable presumption" in favor of the availability of equitable tolling in federal causes of action, but it subsequently made clear that the courts should not apply the doctrine of equitable tolling when to do so would be "fundamentally inconsistent" with other aspects of a statutory structure set in place by Congress, including other aspects of the statute of limitations. See *Lampf, Pleva, Lipkind, Prupis & Petigrow* v. *Gilbertson*, 501 U.S. 350, 363 (1991); *United States* v. *Brockamp*, 117 S. Ct. 849, 852 (1997). In the context of the QTA, equitable tolling is inconsistent with both the generous 12-year limitation period and the statutory specification that that period runs from the date on which the plaintiff or his predecessor in interest "knew or should have known" of the government's claim. See 28 U.S.C. 2409a(g).

Nothing in the text or the legislative history of the QTA suggests that Congress intended that equitable tolling could be applied to extend still further this long limitation period. The QTA's 12-year statute of limitations already incorporates equitable considerations, see *Hart* v. *United States*, 585 F.2d 1280, 1284-1285 (5th Cir. 1978), cert. denied, 442 U.S. 941 (1979), and as one judge has observed, "[l]iberal estoppel and tolling, tacked onto a long period of limitations, is double counting." *Cange* v. *Stolter & Co.*, 826 F.2d 581, 599 (7th Cir. 1987) (Easterbrook, J., concurring). Further, it is particularly difficult to square equitable tolling with the fact that the QTA's statute of limitations provides that the cause of action accrues only when the plaintiff or his predecessor in interest "knew or should have known" of the claim of the United States. Whereas some limitation periods run from the event giving rise to the cause of action, whether or not the

plaintiff was aware of it (see, *e.g.*, *Lampf*, 501 U.S. at 361-362), that is not the case with the QTA. A plaintiff under the QTA is under an obligation to file suit only once he or his predecessor in interest actually knows of the government's claim, or reasonably should be aware of the facts giving rise to that claim. Allegations of misconduct by the government, such as concealment of material facts about the government's claim or misleading statements about the nature of that claim, might be relevant to determining when the plaintiff or his predecessor "knew or should have known of the claim of the United States." But those allegations should not provide a basis for *also* concluding that the limitation period was subject to tolling, even where, as here, the plaintiff concededly *did* know of the United States' claim. If the court's holding were accepted, then respondents' allegations about misrepresentations by the government apparently would both set the date on which the limitation period began, and also toll that period. Such a result would truly be "double counting."[18]

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[18] Even if the 12-year limitation period under the QTA were subject to equitable tolling in some circumstances, it was not subject to tolling here. The district court, based on its "careful review of the record," found "little or no evidence to support [respondents'] allegations of fraud, mutual mistake, and so forth," and indeed found that "[t]he United States acted in good faith in the settlement of [the *Adams*] case." App., *infra*, 43a. The court of appeals did not conclude that that determination was clearly erroneous. It merely reached its own conclusion that the government may not benefit from the limitation period, in light of what it believed to be the "diligence" displayed by respondents, which (it stated) "resulted in their discovering a grant that apparently not even custodians of the public land records could or would locate." *Id.* at 10a. The court of appeals did not suggest, however, that government attorneys or other personnel were aware of or intentionally withheld information supporting the validity of a claim by respondents through the Boudreau Grant. In fact, in the *Adams* case, the government cited to the *American State Papers* where there was a reference to such a grant accompanied by an explanation why the grant did not confer title. See p. 6, *supra*. Despite the government's reference to the issue in the *Adams* case, respondents did not retain their expert to search the Archives until 1991, nine years after the consent judgment was entered. That delay is scarcely consistent with "diligence" on respondents' part. For these same reasons that there was no basis whatever for equitable tolling of the QTA's limitation period (even if we assume, *arguendo*, that that period may ever be tolled), there was no basis for setting aside the prior consent judgment due to fraud or mutual mistake.

3. Even if the court of appeals' conclusion that the district court had subject-matter jurisdiction over this case were correct, its decision to address the merits of the land dispute *itself*, rather than remand the case to the district court (which had denied respondents' motion for summary judgment) for further proceedings led it into serious procedural and substantive error. Ordinarily, a denial of summary judgment is interlocutory and hence not appealable. Nonetheless, having reversed the district court's grant of the government's motion to dismiss respondents' complaint, the court of appeals reviewed and reversed the district court's denial of summary judgment in this case (reaching well beyond the relief sought even in the complaint by quieting title for respondents to the lands that they claimed on Horn Island). Its decision to review the district court's denial of summary judgment presents an important issue of appellate jurisdiction as to which there is a conflict among the courts of appeals: whether, on appeal from a district court's grant of a dispositive motion terminating litigation in favor of a defendant, a court of appeals may also review interlocutory rulings that were not related to the basis for that final judgment.

The Sixth, Eighth, Ninth, and Eleventh Circuits have squarely held that a court of appeals may not, in those circumstances, review interlocutory rulings that did not

"produce" the final judgment. As the Eleventh Circuit stated in *Foy* v. *Schantz, Schatzman & Aaronson, P.A.*, 108 F.3d 1347, 1350 (1997), "[o]nly those prior non-final orders that 'produced the [final] judgment' of the district court are subject to [the court of appeals'] review on appeal." The court held there that it could not, after reversing a final judgment dismissing a case for lack of jurisdiction, also review the district court's interlocutory denial of a motion to dismiss for failure to state a claim. *Ibid.*; see also *Akin* v. *PAFEC Ltd.*, 991 F.2d 1550, 1563 (11th Cir. 1993) (district court's denial of plaintiff's request for jury trial could not be reviewed after court of appeals reversed grant of summary judgment to defendant, because "the district court's ruling on the jury demand issue bears no relation to the final judgment which forms the basis of our appellate jurisdiction"); accord *Burke* v. *Ernest W. Hahn, Inc.*, 592 F.2d 542, 546 (9th Cir. 1979) ("The denial of a motion for summary judgment is not an appealable order * * * and this is so even where an action is incorrectly dismissed by the district court for lack of subject matter jurisdiction."); *Goodman* v. *McDonnell Douglas Corp.*, 606 F.2d 800, 804 n.11 (8th Cir. 1979) ("The denial of a motion for summary judgment is not an appealable order, and the dismissal on the basis of laches does not convert the denial of summary judgment into a 'final judgment' for purposes of appeal."), cert. denied, 446 U.S. 913 (1980); *Milan Express Co.* v. *Western Surety Co.*, 886 F.2d 783, 785 n.1 (6th Cir. 1989) (on appeal from final judgment dismissing case for lack of subject-matter jurisdiction, court of appeals had no jurisdiction to review denial of class certification).

Some courts have suggested that, when the facts are not in contention and the dispute between the parties involves only issues of law, then a court of appeals, after announcing the proper rule of law and reversing a final judgment

based on the application of an erroneous legal rule by the district court, may direct entry of summary judgment for the appellant. See, *e.g.*, *Swaback* v. *American Information Technologies Corp.*, 103 F.3d 535, 543-544 & n.24 (7th Cir. 1996). This, however, is manifestly not such a case. Here, in light of its conclusion that the judgment in favor of the United States in *Adams* should not be reopened, and its resulting dismissal of the action, the district court denied respondents' motion for summary judgment without reaching the merits of their claim of title. See App., *infra*, 44a. The district court therefore had no occasion to resolve any issues of law or fact concerning respondents' motion for summary judgment. The impropriety of the court of appeals' decision in reaching and resolving the merits of that claim and ordering that title be awarded to respondents is made all the more apparent by several errors underlying the court's conclusion that "the validity of [respondents'] title is a legal certainty." *Id.* at 9a.

The court's decision to quiet title in favor of respondents necessarily rested on the incorrect premise that Professor Baade's affidavit had conclusively resolved all questions regarding both the legal validity of the Boudreau Grant and the chain of title between the Boudreaus and respondents. In fact, the Baade affidavit did not even purport to address the chain of title; even if the Boudreau Grant were valid, that would not necessarily mean that respondents have good title to the lands in question. And as to the Boudreau Grant, while the court of appeals relied on Professor Baade's legal "Memorandum on Title to Horn Island" (R.E. 150-189), which stated a legal conclusion that Bernardo de Galvez had authority in August 1781 to grant Horn Island to Catalina Boudreau

(R.E. 157),[19] that conclusion is in direct conflict with this Court's determination in *Power's Heirs*, 52 U.S. (11 How.) at 579-580, that de Galvez lacked legal authority to issue grants to lands east of the Pearl River on August 1, 1781, the very day he is said to have issued the grant to Catalina Boudreau for Horn Island, which is east of the Pearl River. And even if de Galvez had authority to issue the Boudreau Grant, respondents would still have to establish that the Boudreau Grant was consistent with Spanish law at the time;[20] that Catalina Boudreau's heirs had not forfeited their claim by failing to cultivate or inhabit the land; and that the United States' open and undisturbed claim to the lands as public domain had not effected an

[19] Furthermore, although the court of appeals stated that Professor Baade's conclusions about the validity of the Boudreau Grant were uncontroverted on the summary judgment record (App., *infra*, 8a), Professor Baade himself stated that he had performed an evaluation and determination of "the *legal* effect of * * * the 'Boudreau Grant'" (R.E. 134 (emphasis added)). While Federal Rule of Civil Procedure 56(e) permits a court to rely on unchallenged "facts as would be admissible in evidence," it does not permit a court to give dispositive weight to *legal conclusions* in an affidavit. Rule 56(e) requires that affidavits in support of motions for summary judgment "shall be made on personal knowledge," and also requires an affirmative showing that the affiant "is competent to testify to the matters stated therein." Legal conclusions, therefore, are not within the scope of affidavits offered under Rule 56. See 10A C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2738, at 486-489 (1983).

[20] At the time of the alleged grant of Horn Island to Catalina Boudreau, Spanish grants in the province of Louisiana were governed by the regulations of Governor O'Reilly, dated February 18, 1770. See *Power's Heirs*, 52 U.S. (11 How.) at 576; see generally *Muse* v. *Arlington Hotel Co.*, 68 F. 637 (E.D. Ark. 1895), error dismissed, 168 U.S. 430 (1897). Those regulations included formal requirements of "an actual survey on the ground before the title of the crown was divested, followed by an actual putting the grantee in pedal possession." 68 F. at 640.

adverse possession against Catalina Boudreau's successors in interest.

All those questions were left unresolved by the parties' mutual agreement to the entry of a consent judgment in the earlier suit, and none of them was passed on by the district court in this litigation. Moreover, the court of appeals' ruling that de Galvez' grant to Catalina Boudreau was valid may cloud the United States' title in other parcels of land in the Gulf Islands National Seashore—including those parcels in which the other defendants to the original quiet title action brought by the United States claimed an interest—along with other lands east of the Pearl River, including those at issue in the *Power's Heirs* case. At a minimum, therefore, even if the court of appeals had appellate jurisdiction to review the district court's disposition of respondent's motion for summary judgment based on the Boudreau Grant, it should not itself have passed on the validity of respondents' claim, but should have remanded the case to the district court for further proceedings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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OCTOBER 1997

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 95-60625

CHRIS W. BEGGERLY; JAMES R. BEGGERLY; CLARK M. BEGGERLY; VELMA B. GARNER; SUZANNE REED; DAVID REED,
PLAINTIFFS-APPELLANTS,

v.

UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

[Filed: May 29, 1997]
[As Corrected on Rehearing and Filed July 28, 1997]

Before: POLITZ, Chief Judge, EMILIO M. GARZA and STEWART, Circuit Judges.

POLITZ, Chief Judge:

The panel substitutes the following for its opinion previously issued:

The Beggerlys appeal the district court's order granting the motion to dismiss by the United States and denying the Beggerlys' cross-motion for summary judgment in which they sought to vacate a consent judgment under which the United States acquired title to property previously held by the

Beggerlys. Concluding that the Beggerlys are entitled to the relief sought, we reverse, and remand.

BACKGROUND

On April 3, 1950 Clark M. Beggerly, Sr., on behalf of his family, bought a portion of Horn Island, offshore in the Gulf of Mexico, at a tax sale in Jackson, Mississippi. On January 8, 1971 Congress enacted legislation authorizing the Department of Interior to establish a federal park on lands that included Horn Island.[1] In 1972 the National Park Service began negotiating with the Beggerlys for the purchase of their property on Horn Island. In October 1975 the Beggerlys entered into a contract to sell the land to the government for $156,500. Subsequently the government canceled the contract contending that because it had never issued a land patent, it was the title owner of Horn Island.

In 1979 the government brought a quiet title action in the Southern District of Mississippi against the Beggerlys and other defendants. During discovery the Beggerlys sought proof of their title, and government officials ostensibly conducted a thorough search of the public land records. The government then formally represented to the Beggerlys and the district court that no part of Horn Island had ever been granted to a private landowner and, as a result of these representations, in 1982 the government persuaded the Beggerlys to accept a settlement agreement it proposed. The district court entered judgment based upon that agreement; the Beggerlys

[1] 16 U.S.C. § 459h.

received $208,175.87 and title was quieted in favor of the United States.[2]

Their disappointment with the results of the settlement led the Beggerlys to mount an exhaustive search for a land patent to support their claim of title. They wrote letters to public officials, made Freedom of Information Act requests, and searched land records in Alabama, Mississippi, Louisiana, and Washington, D.C. Finally, in 1991 the Beggerlys hired a genealogical record specialist who conducted research in the National Archives and discovered the Boudreau Grant which supported the Beggerlys' claim of title. Government officials reportedly had searched the National Archives during the quiet title suit but had not discovered this document and thereafter erroneously advised the court and the Beggerlys that Horn Island had never been privately disposed. The Beggerlys contacted the Bureau of Land Management requesting the issuance of a land patent for Horn Island. The BLM summarily denied their request.

The Beggerlys then filed the instant action on June 1, 1994 seeking to set aside the consent judgment and to recover just compensation. The government moved to dismiss the complaint, invoking Fed.R.Civ.P. 12(b)(6) and 12(b)(1). The Beggerlys filed a cross-motion for summary judgment and filed an amended motion to add the Tucker Act[3] and the Quiet Title Act[4] as jurisdictional bases. The district court granted the government's motion to dismiss and

[2] *United States v. Adams*, No. S79-0338(R) (S.D. Miss. Dec. 3, 1982).

[3] 28 U.S.C. § § 1346, 1491.

[4] 28 U.S.C. § 2409a.

denied the Beggerlys' cross-motion for summary judgment and motion to amend. The Beggerlys timely appealed.

ANALYSIS

1. *Sovereign Immunity*

The government contends that sovereign immunity bars the Beggerlys from proceeding with an independent action in equity. The government relies on *Zegura v. United States*[5] in which we held that sovereign immunity barred a bill of review brought to vacate a prior judgment obtained by the United States. The Eleventh Circuit viewed *Zegura* as controlling authority for the proposition that an independent action could not be brought against the government absent a waiver of sovereign immunity.[6] We are not so persuaded and do not find *Zegura* as controlling herein. *Zegura* dealt only with a bill of review, which is a type of equitable action that has been replaced by the motions enumerated in Fed.R.Civ.P. 60(b). Although an independent action in equity is similar to a bill of review and its modern successors—the Rule 60(b) motions—it is nonetheless a different action. Rule 60(b) makes the distinction clear, stating that it does not "limit the power of a court to entertain an independent action." We therefore conclude that *Zegura* does not control in the independent action context.

We have held that an independent action filed in the same court that rendered the original judgment is a continuation of the original action for purposes of

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[5] 104 F.2d 34 (5th Cir.), *cert. denied*, 308 U.S. 586 (1939).

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subject matter jurisdiction.[7] It would be anomalous to torpedo a party bringing the independent action with a plea of sovereign immunity when the action is in reality a continuation of the original lawsuit in which jurisdiction was not an issue. To allow the government to use sovereign immunity as a shield where it previously has invoked the court's jurisdiction and prevailed in an action based upon its misrepresentations, negligence, or mistake would do unacceptable violence to our basic notions of justice. We therefore agree with our colleagues in the Second Circuit and now conclude and hold that governmental consent is not required to bring an independent action in the same court as the original action.[8]

2. *The Independent Action*

The elements of an independent action are:

> (1) a judgment which ought not, in equity and good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; and (5) the absence of any adequate remedy at law.[9]

The Beggerlys have satisfied these elements. We now hold that the district court erred as a matter of law in denying the Beggerlys' action to vacate the

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[7] *West Virginia Oil & Gas Co. v. George E. Breece Lumber Co.*, 213 F.2d 702 (5th Cir. 1954).

[8] *Weldon v. United States*, 70 F.3d 1 (2d Cir. 1995).

[9] *Bankers Mortgage Co. v. United States*, 423 F.2d 73 (5th Cir.) (quoting *National Sur. Co. v. State Bank*, 120 F. 593, 599 (8th Cir.1903)), *cert. denied*, 90 S.Ct. 2242 (1970).

consent judgment. Crucial to that determination is our conclusion that the district court erred in failing to recognize the validity of the Boudreau Grant. That document is an English translation of a 1781 Spanish land grant in which the Governor General of Spanish Louisiana conveyed Horn Island to Catarina Boudreau. Although the available document is not the original grant, it is the only copy available, presumably because a fire destroyed the Spanish West Florida archives where the original Spanish version would have been stored. The Supreme Court has held that a certified translation of a Spanish land grant may be used to prove the existence of a grant where the original cannot be found or has been destroyed.[10] We therefore find and conclude that the English translation is the best evidence of the original grant and is admissible to prove its existence.

The government contended at oral argument that the Boudreau Grant was merely an application for a land patent. In the early 19th century Congress established land commissions to organize the private claims of landowners, in what are now the states of Louisiana, Mississippi, Alabama, and Florida, who had acquired their property from England, France, or Spain. Heirs of Catarina Boudreau presented the Boudreau Grant to the land commissioner for claims east of the Pearl River. It was not accepted. The land commissioners were responsible for ascertaining titles and claims but did not have the authority to adjudicate title. The controlling statute required that the commissioners submit claims to Congress

[10] *United States v. Delespine's Heirs*, 37 U.S. (12 Pet.) 654 (1838).

for final action.[11] We must therefore conclude that the land commissioner's refusal to accept the application did not conclusively determine that Horn Island belonged to the United States.

It is abundantly clear that the land commissioners did not have the authority to confiscate property rightfully owned by private individuals. It is well-settled that, absent a specific congressional act, land validly granted by a foreign nation remained privately owned after the United States acquired political control of the subject area. Chief Justice John Marshall taught:

> The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated, and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed.[12]

Articles II and III of the treaty consummating the Louisiana Purchase, under which the United States acquired property south of the 31st parallel where Horn Island is located,[13] expressly protected the rights of private landowners. We consider it beyond serious debate that if the Boudreau Grant was a valid

[11] Act of April 25, 1812, 2 Stat. 713; *see generally United States v. Percheman*, 32 U.S. (7 Pet.) 51 (1833).

[12] *Percheman* at 86-87.

[13] *United States v. Louisiana*, 363 U.S. 1 (1960); *Foster v. Neilson*, 27 U.S. (2 Pet.) 253 (1829), *overruled on other grounds by Percheman*.

land grant under the Spanish law of 1781, then Horn Island remained private property after the Louisiana Purchase. If, however, the grant was incomplete or invalid under Spanish law, then the land commissioner was justified in his rejection. We inquire, therefore, as to the validity of the Boudreau Grant under Spanish law at the time it was made. The summary judgment record contains an affidavit by Professor Hans Baade, offered by the Beggerlys as evidence that the Boudreau Grant was complete and valid under the Spanish law of 1781. On the record before us the Boudreau Grant vested complete and valid title in Catarina Boudreau. On that record, therefore, we must conclude that the property at issue herein remained privately owned after the Louisiana Purchase and did not enter the public domain of the United States until the misrepresentation-based consent judgment of 1982.

The government possessed a document that was vital to the Beggerlys' claim of title to the land they had acquired on Horn Island. Notwithstanding, it represented to the Beggerlys and to the district court that no evidence existed that Horn Island had ever been privately owned. This representation precipitated the Beggerlys' involuntary settlement of the government's lawsuit. Their inability to prove their title was directly caused by the government's failure to produce the grant and its misrepresentation that no private disposal had ever been made. Equity permits us to correct injustice in extraordinary and unusual circumstances such as are here presented. We exercise that authority and as to the Beggerlys

set aside the challenged consent judgment as null and void *ab initio*.[14]

3. *Quiet Title Act Claim*

The Beggerlys filed a motion to amend their complaint to claim relief under the Quiet Title and Tucker Acts. The district court denied that motion. We read the Beggerlys' complaint and motion for summary judgment as stating alternative causes of action. Although the district court did not have jurisdiction over an inverse condemnation action under the Tucker Act,[15] it did have jurisdiction to adjudicate title under the Quiet Title Act. We conclude that the district court abused its discretion and should have allowed the Beggerlys to amend their complaint because "[t]he requested amendment would have done no more than state an alternative jurisdictional basis for recovery upon the facts previously alleged."[16]

The record reflects that the Beggerlys legally acquired a part of Horn Island in a tax sale. Because we have set aside the earlier judgment as to the Beggerlys and have found that the United States has no legitimate claim to the land, the validity of the Beggerlys' title is a legal certainty. The government maintains, however, that a claim under the Quiet Title Act is barred unless it is commenced within 12 years of the date on which it accrued.[17] A claim is deemed to accrue on the date the plaintiff knows or

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[14] We note that there are no fixed time limitations on bringing an independent action in equity. *In re West Texas Mktg. Corp.*, 12 F.3d 497 (5th Cir. 1994).

[15] *See* 28 U.S.C. §§ 1346, 1491 (vesting exclusive jurisdiction in the Federal Court of Claims for claims exceeding $10,000).

[16] *Miller v. Stanmore*, 636 F.2d 986, 990 (5th Cir. 1981).

[17] 28 U.S.C. § 2409a(g).

should have known about the claim of the United States.[18] The Beggerlys knew about the claim at the earliest in 1976 when the government ceased contract negotiations with them for the purchase of their Horn Island property. More than 12 years passed before the Beggerlys commenced the current action; however, a statute of limitations may be tolled on equitable grounds. "Equitable tolling applies principally where the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his rights."[19] On the record before us the government may not benefit from the limitations period, especially in light of the diligence displayed by the Beggerlys in seeking the truth and pursuing their rights, which resulted in their discovering a grant that apparently not even custodians of the public land records could or would locate. We conclude that the limitations period was tolled from the time the Beggerlys began searching for evidence of a private disposal during the original quiet action until they discovered the Boudreau Grant and, thus, that their action manifestly was filed within the 12-year limitations period.

We remand to the district court so that it may enter judgment quieting title in favor of the Beggerlys. Under 28 U.S.C. § 2409a(b) the United States has the option of delivering possession of the 729 acres claimed by the Beggerlys or it may elect to retain possession thereof and pay the Beggerlys just com-

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[18] *Id.*

[19] *Rashidi v. American President Lines*, 96 F.3d 124, 128 (5th Cir. 1996). Equitable tolling may be applied against the United States. *Irwin v. Department of Veterans Affairs*, 111 S.Ct. 453 (1990).

pensation for same. The district court is to take into account the compensation of $208,175.87 received by the Beggerlys in the 1982 settlement. The judgment of the district court is REVERSED and judgment is RENDERED in favor of the Beggerlys and this cause is REMANDED for further proceedings consistent herewith.

EMILIO M. GARZA, Circuit Judge, dissenting:

I agree with much of today's majority opinion. I agree with the majority that the complaint is not a motion under Fed. R. Civ. P. 60(b)(1)-(6), and that it should more properly be considered an independent action in equity, since Beggerly explicitly invoked the equitable jurisdiction of the district court in his complaint. I agree with the majority that the district court erred in dismissing the action as untimely, because there is no fixed limitations period for such equitable actions. And finally, I agree with the majority that the equities of this case favor Beggerly and his family. However, because we do not have jurisdiction to provide such relief, I must part company with the majority. As judges, we have equitable discretion to do justice within the limits of the law, but we can go no further. In this case, the government has not waived its sovereign immunity to suit, which bars our jurisdiction to provide relief.

As an initial matter, I would not treat an independent action in equity as a "continuation" of the underlying suit with ancillary jurisdiction from the original action. In a similar context, the Supreme Court appears to have foreclosed the notion of ancillary jurisdiction in cases such as this one, involving a challenge to a settlement agreement in federal court. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S.

375, 380, 114 S. Ct. 1673, 1676, 128 L. Ed. 2d 391 (1994) ("No case of ours asserts, nor do we think the concept of limited federal jurisdiction permits us to assert, ancillary jurisdiction over any agreement that has as part of its consideration the dismissal of a case before a federal court.").

Furthermore, the Fifth Circuit has long held that independent actions must have jurisdiction independent of the judgments they challenge. *Bankers Mortgage Trust Co. v. United States*, 423 F.2d 73, 78 (5th Cir.), *cert. denied*, 399 U.S. 927, 90 S. Ct. 2242, 26 L. Ed. 2d 793 (1970); *Jones v. Watts*, 142 F.2d 575 (5th Cir.), *cert. denied*, 323 U.S. 787, 65 S. Ct. 310, 89 L. Ed. 628 (1944); *Zegura v. United States*, 104 F.2d 34, 35 (5th Cir.), *cert. denied*, 308 U.S. 586, 60 S. Ct. 109, 84 L. Ed. 490 (1939).[1]

West Virginia Oil & Gas v. George E. Breece Lumber, cited by the majority, appears to have created an exception to this general rule. *West Virginia*

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[1] I recognize that there is a conflict among the other circuits regarding whether independent actions require independent jurisdiction. *Compare Weldon v. United States*, 70 F.3d 1, 4 (2d Cir. 1995) (holding that independent actions are ancillary to original suit) and *Crosby v. Mills*, 413 F.2d 1273, 1275 (10th Cir. 1969) (same) *with In re Hunter*, 66 F.3d 1002, 1005-06 (9th Cir. 1995) (rejecting notion of ancillary jurisdiction in independent actions); *United States v. Timmons*, 672 F.2d 1373, 1378-79 (11th Cir. 1982) (same); *and Andrade v. United States*, 485 F.2d 660, 664 (Ct. Cl. 1973) (same), *cert. denied*, 419 U.S. 831, 95 S. Ct. 55, 42 L. Ed. 2d 57 (1974). *See also* 11 Charles A. Wright, Arthur R. Miller & Mary K. Kane, Federal Practice & Procedure: Civil § 2868 at 403 (2d ed. 1995) (supporting notion of ancillary jurisdiction, citing generally *Pacific R. Co. v. Missouri Pac. Ry. Co.*, 111 U.S. 505, 522, 4 S. Ct. 583, 28 L. Ed. 498 (1884)); 7 James W. Moore, Moore's Federal Practice ¶ 60.38[1], at 60-399 (2d ed. 1995) (same).

Oil was a federal diversity case in which the parties to the original action were diverse, but after judgment, sales of the property at stake defeated complete diversity. 213 F.2d 702, 704 (5th Cir. 1954). In *West Virginia Oil*, we held that the district court had continuing diversity jurisdiction to correct errors in the original judgment. *Id.* at 706-07. The "ancillary jurisdiction" reasoning of *West Virginia Oil* has little or no precedential value in light of the Supreme Court's holding in *Kokkonen* or in light of our prior cases, reflected most recently in *Bankers Mortgage*, in which we required that an independent action be "founded upon an independent and substantive equitable jurisdiction." 423 F.2d at 78.

Moreover, to the extent that *West Virginia Oil* has any value as precedent, the case is inapposite here because it is on a completely different jurisdictional footing. *West Virginia Oil* was a case in which the parties could not review the judgment in federal court without ancillary jurisdiction. Beggerly, on the other hand, could have pursued this suit under several different statutes conferring federal jurisdiction independent of that in the original action. The federal courts would have had independent jurisdiction over a timely action under the Quiet Title Act, 28 U.S.C. § 2409a; the Tucker Act, 28 U.S.C. § 1491; and probably general federal question jurisdiction under 28 U.S.C. § 1331 (putting sovereign immunity to one side for the moment). Because there is no need to assert ancillary jurisdiction to review the underlying settlement in federal court, *West Virginia Oil* is not

on point, even to the extent that it was ever good law in the first place.[2]

My concern over the characterization of this suit as independent or ancillary is not as serious as my

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[2] Our *West Virginia Oil* opinion relies solely on an apparent misreading of Supreme Court precedent. In *West Virginia Oil*, the court confused the history of independent actions and the common law predecessors to the separate actions of Fed. R. Civ. P. 60(b). Independent actions are distinct, and "should under no circumstances be confused with ancillary common law and equitable remedies, or their modern substitute, the 60(b) motion." *Bankers Mortgage*, 423 F.2d at 78. The *West Virginia Oil* court simply cited a Supreme Court case that found ancillary jurisdiction for the precursor to Rule 60(b) motions, and held that there was similar ancillary jurisdiction in independent actions.

The *West Virginia Oil* court relied on *Pacific Railroad of Missouri v. Missouri Pacific Railway Co.*, 111 U.S. 505, 522, 4 S. Ct. 583, 592, 28 L. Ed. 2d 498 (1884), which involved a bill in equity to vacate a judgment on the basis of fraud. The bill in equity in that case was a bill of review (one of the forebears of Rule 60(b)), not an independent action in equity. *Zegura*, 104 F.2d at 35 (characterizing the bill in *Pacific Railroad* as a "bill of review"). Therefore *Pacific Railroad* has little or no precedential force for independent actions. A bill of review, like a Rule 60(b) motion, had to be brought in the court that rendered judgment and was essentially a request that the court reopen the judgment to reverse or correct a final decree. Wright, Miller & Kane, Federal Practice & Procedure: Civil § 2867 at 394. The unremarkable fact that a motion to reopen a judgment enjoys ancillary jurisdiction therefore should not disturb our precedents holding that independent actions in equity are founded upon an independent and substantive equitable jurisdiction. *Bankers Mortgage*, 423 F.2d at 78. I agree with the *Bankers Mortgage* court, and apparently the Supreme Court in *Kokkonen*, that it is important not to confuse the two conceptually distinct avenues for review.

other concerns: waiver of sovereign immunity and the proper reach of the majority opinion.

The United States is, of course, immune from suit without its consent, *Loeffler v. Frank*, 486 U.S. 549, 554, 108 S. Ct. 1965, 1969, 100 L. Ed. 2d 549 (1988), and we are to construe waivers of sovereign immunity "strictly in favor of the sovereign." *United States Dep't of Energy v. Ohio*, 503 U.S. 607, 615, 112 S. Ct. 1627, 1633, 118 L. Ed. 2d 255 (1992). Beggerly can cite no statutory waiver of sovereign immunity in this case, either in the original action or in the independent action. The majority bypasses the question of sovereign immunity by holding that "governmental consent is not required to bring an independent action in the same court as the original action[,]" citing the Second Circuit's opinion in *Weldon v. United States*, 70 F.3d 1, 4 (2d Cir. 1995). Regardless of the equities of any individual case, governmental consent is always required as a prerequisite to federal jurisdiction. *Loeffler*, 486 U.S. at 554.

The Second Circuit's opinion in *Weldon* is not to the contrary. Although the Second Circuit in *Weldon* agrees with the majority that independent actions are "continuations" of the original actions they challenge, the court does not claim that waiver of sovereign immunity is unnecessary. In *Weldon*, the parties sued under the Federal Tort Claims Act in the original suit, which constituted a statutory waiver of sovereign immunity. 70 F. 3d at 2. The *Weldon* court held that, because the independent action was essentially a continuation of the original suit, the government's waiver of sovereign immunity in the original action should continue to bind the United States in the subsequent challenge. *Id.* *Weldon* does not suggest that waiver is unnecessary,

only that it may be continued from the original suit. So even if we were to find in the instant case that independent actions should be considered a continuation of the original actions they challenge (a point I still dispute), there would still be no waiver of sovereign immunity in the original action for us to continue. Of course, we cannot equitably waive sovereign immunity on behalf of the government; therefore we do not have jurisdiction to consider this suit.[3]

My final concern is that the majority reaches issues not before us in this opinion. Even if there were a waiver of sovereign immunity in this case, we would have no jurisdiction to reach the merits of Beggerly's cross motion for summary judgment, the validity of the Boudreau grant, or the ownership of Horn Island, as the majority does. These issues are fraught with difficult fact questions that must be decided by the district court, which alone has jurisdiction to consider them. Moreover, the majority should not have reached those issues on the incomplete summary judgment record before us, but instead should have remanded them to the district court. Therefore I respectfully dissent.

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[3] Presumably a timely challenge to the original action under the Quiet Title Act or the Tucker Act, each of which involves a statutory waiver of immunity, would not suffer from this infirmity of the independent action in equity.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-60625

CHRIS W. BEGGERLY; JAMES R. BEGGERLY;
CLARK M. BEGGERLY; VELMA B. GARNER;
SUZANNE REED; DAVID REED,
PLAINTIFFS-APPELLANTS,

v.

UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

[Filed: May 29, 1997]

Before: POLITZ, Chief Judge, EMILIO M. GARZA and STEWART, Circuit Judges.

POLITZ, Chief Judge:

The Beggerlys appeal the district court's order granting the motion to dismiss by the United States and denying the Beggerlys' cross-motion for summary judgment in which they sought to vacate a consent judgment under which the United States acquired title to property previously held by the Beggerlys. Concluding that the Beggerlys are entitled to the relief sought, we reverse and remand.

BACKGROUND

On April 3, 1950 Clark M. Beggerly, Sr., on behalf of his family, bought real estate known as Horn Island, offshore in the Gulf of Mexico, at a tax sale in Jackson, Mississippi. On January 8, 1971 Congress enacted legislation authorizing the Department of Interior to establish a federal park on lands that included Horn Island.[1] In 1972 the National Park Service began negotiating with the Beggerlys for the purchase of Horn Island. In October 1975 the Beggerlys entered into a contract to sell the land to the government for $156,500. Subsequently the government canceled the contract contending that because it had never issued a land patent, it was the title owner of Horn Island.

In 1979 the government brought a quiet title action in the Southern District of Mississippi against the Beggerlys and other defendants. During discovery the Beggerlys sought proof of their title, and government officials ostensibly conducted a thorough search of the public land records. The government then formally represented to the Beggerlys and the district court that Horn Island had *never* been granted to a private landowner and, as a result, in 1982 the government representation persuaded the Beggerlys to reluctantly accept a settlement agreement. The district court entered judgment based upon that agreement in which the Beggerlys received $208,175.87 and title was quieted in favor of the United States.[2]

Their disappointment with the results of the settlement led the Beggerlys to mount an exhaustive

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[1] 16 U.S.C. § 459h.

[2] *United States v. Adams*, No. S79-0338(R) (S.D. Miss. Dec. 3, 1982).

search for a land patent to support their claim of title. They wrote letters to public officials, made Freedom of Information Act requests, and searched land records in Alabama, Mississippi, Louisiana, and Washington, D.C. Finally, in 1991 the Beggerlys hired a genealogical record specialist who conducted research in the National Archives and discovered the Boudreau Grant which supported the Beggerlys' claim of title. Government officials reportedly had searched the National Archives during the quiet title suit but had not discovered this document and thereafter erroneously asserted that Horn Island had belonged to the United States from the time of its acquistion in the Louisiana Purchase. The Beggerlys contacted the Bureau of Land Management requesting the issuance of a land patent for Horn Island. The BLM summarily denied their request.

The Beggerlys then filed the instant action on June 1, 1994 seeking to set aside the consent judgment and to recover just compensation. The government moved to dismiss the complaint, invoking Fed.R.Civ.P. 12(b)(6) and 12(b)(1). The Beggerlys filed a cross-motion for summary judgment and filed an amended motion to add the Tucker Act[3] and the Quiet Title Act[4] as jurisdictional bases. The district court granted the government's motion to dismiss and denied the Beggerlys' cross-motion for summary judgment and motion to amend. The Beggerlys timely appealed.

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[3] 28 U.S.C. § § 1346, 1491.

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ANALYSIS

1. *Sovereign Immunity*

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We have held that an independent action filed in the same court that rendered the original judgment is a continuation of the original action for purposes of subject matter jurisdiction.[7] It would be anomalous to torpedo a party bringing the independent action with

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a plea of sovereign immunity when the action is in reality a continuation of the original lawsuit in which jurisdiction was not an issue. To allow the government to use sovereign immunity as a shield where it previously has subjected itself to the court's jurisdiction and prevailed based upon its misrepresentations, negligence, or mistake would do unacceptable violence to our basic notions of justice. We therefore agree with our colleagues in the Second Circuit and now conclude and hold that governmental consent is not required to bring an independent action in the same court as the original action.[8]

2. *The Independent Action*

The elements of an independent action are:

> (1) a judgment which ought not, in equity and good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; and (5) the absence of any adequate remedy at law.[9]

The Beggerlys have satisfied these elements. We now hold that the district court erred as a matter of law in denying the Beggerlys' action to vacate the consent judgment. Crucial to that determination is our conclusion that the district court erred in failing to recognize the validity of the Boudreau Grant. That document is an English translation of a 1781 Spanish

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[8] *Weldon v. United States*, 70 F.3d 1 (2d Cir. 1995).

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land grant in which the Governor General of Spanish Louisiana conveyed Horn Island to Catarina Boudreau. Although the available document is not the original grant, it is the only copy available, presumably because a fire destroyed the Spanish West Florida archives where the original Spanish version would have been stored. The Supreme Court has held that a certified translation of a Spanish land grant may be used to prove the existence of a grant where the original cannot be found or has been destroyed.[10] We therefore find and conclude that the English translation is the best evidence of the original grant and is admissible to prove its existence.

At oral argument the government characterized the Boudreau Grant as an application for confirmation of a patent. That must be viewed as a misstatement of law. After the Louisiana Purchase, a procedure was established whereby landowners who had acquired property from England, France, or Spain could apply to the United States for a land patent by presenting the grant they had received from the sovereign grantor. Heirs of Catarina Boudreau presented the Boudreau Grant to the land commissioner for claims east of the Pearl River. The government suggests that because the commissioner did not confirm the application, the United States refused to relinquish title to Horn Island. That argument ignores Supreme Court precedent to the contrary. In *United States v. Percheman*, Chief Justice John Marshall overruled a prior interpretation of the Treaty of Amity with Spain and held that private land grants by Spain in East and West Florida were to be treated as

[10] *United States v. Delespine's Heirs*, 37 U.S. (12 Pet.) 654 (1838).

confirmed land patents under United States law.[11] When the grants were valid under Spanish law and were granted while Spain rightfully possessed the land, the United States recognized the claims of private landowners as a matter of law.[12] In the case at bar the government does not challenge the validity of the grant under the Spanish law of 1781, nor is there any doubt that Spain owned Horn Island at the time it made the grant. Accordingly, after the Louisiana Purchase, Horn Island did not become property of the United States but, rather, belonged to the successors in interest of Catarina Boudreau.

The government possessed a document proving that the United States never had title to Horn Island. Notwithstanding, it represented to the Beggerlys and to the district court that no such document existed, leading to the Beggerlys' involuntary settlement with the government. Their inability to prove their title was directly caused by the government's misfiling of the grant and its misrepresentation that no private disposal had ever been made. Equity permits us to correct injustice in extraordinary and unusual circumstances such as are here presented. We exercise that authority and set aside the challenged consent judgment as null and void *ab initio*.[13]

[11] 32 U.S. (7 Pet.) 51 (1833) (overruling in part *Foster v. Neilson*, 27 U.S. (2 Pet.) 253 (1829)); *see also United States v. Postal*, 589 F.2d 862 (5th Cir.), *cert. denied*, 444 U.S. 832 (1979).

[12] *See Garcia v. Lee*, 37 U.S. (12 Pet.) 511 (1838); *United States v. Arrendondo*, 31 U.S. (6 Pet.) 691 (1832).

[13] We note that there are no fixed time limitations on bringing an independent action in equity. *In re West Texas Mktg. Corp.*, 12 F.3d 497 (5th Cir. 1994).

3. *Quiet Title Act Claim*

The Beggerlys filed a motion to amend their complaint to claim relief under the Quiet Title and Tucker Acts. The district court denied that motion. Although the district court did not have jurisdiction to hear the Tucker Act claim,[14] it did have jurisdiction over the Quiet Title Act. We conclude that the district court abused its discretion and should have allowed the Beggerlys to amend their complaint because "[t]he requested amendment would have done no more than state an alternative jurisdictional basis for recovery upon the facts previously alleged."[15]

The record reflects that the Beggerlys legally acquired Horn Island in a tax sale. Because we have set aside the earlier judgment and have found that the United States has no legitimate claim to the land, the validity of the Beggerlys' title is a legal certainty. The government maintains, however, that a claim under the Quiet Title Act is barred unless it is commenced within 12 years of the date on which it accrued.[16] A claim is deemed to accrue on the date the plaintiff knows or should have known about the claim of the United States.[17] The Beggerlys knew about the claim in 1979 when the United States filed suit, and more than 12 years passed before the Beggerlys commenced the current action. A statute of limitations, however, may be tolled on equitable grounds. "Equitable tolling applies principally where the plaintiff is actively misled by the defendant about the cause of

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[14] *See* 28 U.S.C. §§ 1346, 1491 (vesting exclusive jurisdiction in the Federal Court of Claims for claims exceeding $10,000).

[15] *Miller v. Stanmore*, 636 F.2d 986, 990 (5th Cir. 1981).

[16] 28 U.S.C. § 2409a(g).

[17] *Id.*

action or is prevented in some extraordinary way from asserting his rights."[18] On the record before us the government may not benefit from the limitations period, especially in light of the diligence displayed by the Beggerlys in seeking the truth and pursuing their rights, which resulted in their discovering a grant that apparently not even custodians of the public land records could locate. We conclude that the limitations period was tolled until the Beggerlys discovered the Boudreau Grant and, thus, that their action manifestly was filed within the 12-year limitations period.

We remand to the district court so that it may enter judgment quieting title in favor of the Beggerlys and fashion an appropriate remedy, taking into account the compensation of $208,175.87 received by the Beggerlys in 1982. The judgment of the district court is REVERSED and judgment is RENDERED in favor of the Beggerlys and this cause is REMANDED for further proceedings consistent herewith.

EMILIO M. GARZA, Circuit Judge, dissenting:

I agree with much of today's majority opinion. I agree with the majority that the complaint is not a motion under Fed. R. Civ. P. 60(b)(1)-(6), and that it should more properly be considered an independent action in equity, since Beggerly explicitly invoked the equitable jurisdiction of the district court in his complaint. I agree with the majority that the district court erred in dismissing the action as untimely,

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[18] *Rashidi v. American President Lines*, 96 F.3d 124, 128 (5th Cir. 1996). Equitable tolling may be applied against the United States. *Irwin v. Department of Veterans Affairs*, 111 S.Ct. 453 (1990).

because there is no fixed limitations period for such equitable actions. And finally, I agree with the majority that the equities of this case favor Beggerly and his family. However, because we do not have jurisdiction to provide such relief, I must part company with the majority. As judges, we have equitable discretion to do justice within the limits of the law, but we can go no further. In this case, the government has not waived its sovereign immunity to suit, which bars our jurisdiction to provide relief.

As an initial matter, I would not treat an independent action in equity as a "continuation" of the underlying suit with ancillary jurisdiction from the original action. In a similar context, the Supreme Court appears to have foreclosed the notion of ancillary jurisdiction in cases such as this one, involving a challenge to a settlement agreement in federal court. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 380, 114 S. Ct. 1673, 1676, 128 L. Ed. 2d 391 (1994) ("No case of ours asserts, nor do we think the concept of limited federal jurisdiction permits us to assert, ancillary jurisdiction over any agreement that has as part of its consideration the dismissal of a case before a federal court.").

Furthermore, the Fifth Circuit has long held that independent actions must have jurisdiction independent of the judgments they challenge. *Bankers Mortgage Trust Co. v. United States*, 423 F.2d 73, 78 (5th Cir.), *cert. denied*, 399 U.S. 927, 90 S. Ct. 2242, 26 L. Ed. 2d 793 (1970); *Jones v. Watts*, 142 F.2d 575 (5th Cir.), *cert. denied*, 323 U.S. 787, 65 S. Ct. 310, 89 L. Ed. 628 (1944); *Zegura v. United States*, 104 F.2d 34,

35 (5th Cir.), *cert. denied*, 308 U.S. 586, 60 S. Ct. 109, 84 L. Ed. 490 (1939).[1]

West Virginia Oil & Gas v. George E. Breece Lumber, cited by the majority, appears to have created an exception to this general rule. *West Virginia Oil* was a federal diversity case in which the parties to the original action were diverse, but after judgment, sales of the property at stake defeated complete diversity. 213 F.2d 702, 704 (5th Cir. 1954). In *West Virginia Oil*, we held that the district court had continuing diversity jurisdiction to correct errors in the original judgment. *Id.* at 706-07. The "ancillary jurisdiction" reasoning of *West Virginia Oil* has little or no precedential value in light of the Supreme Court's holding in *Kokkonen* or in light of our prior cases, reflected most recently in *Bankers Mortgage*, in which we required that an independent action be "founded upon an independent and substantive equitable jurisdiction." 423 F.2d at 78.

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[1] I recognize that there is a conflict among the other circuits regarding whether independent actions require independent jurisdiction. *Compare Weldon v. United States*, 70 F.3d 1, 4 (2d Cir. 1995) (holding that independent actions are ancillary to original suit) and *Crosby v. Mills*, 413 F.2d 1273, 1275 (10th Cir. 1969) (same) *with In re Hunter*, 66 F.3d 1002, 1005-06 (9th Cir. 1995) (rejecting notion of ancillary jurisdiction in independent actions); *United States v. Timmons*, 672 F.2d 1373, 1378-79 (11th Cir. 1982) (same); *and Andrade v. United States*, 485 F.2d 660, 664 (Ct. Cl. 1973) (same), *cert. denied*, 419 U.S. 831, 95 S. Ct. 55, 42 L. Ed. 2d 57 (1974). *See also* 11 Charles A. Wright, Arthur R. Miller & Mary K. Kane, Federal Practice & Procedure: Civil § 2868 at 403 (2d ed. 1995) (supporting notion of ancillary jurisdiction, citing generally *Pacific R. Co. v. Missouri Pac. Ry. Co.*, 111 U.S. 505, 522, 4 S. Ct. 583, 28 L. Ed. 498 (1884)); 7 James W. Moore, Moore's Federal Practice ¶ 60.38[1], at 60-399 (2d ed. 1995) (same).

Moreover, to the extent that *West Virginia Oil* has any value as precedent, the case is inapposite here because it is on a completely different jurisdictional footing. *West Virginia Oil* was a case in which the parties could not review the judgment in federal court without ancillary jurisdiction. Beggerly, on the other hand, could have pursued this suit under several different statutes conferring federal jurisdiction independent of that in the original action. The federal courts would have had independent jurisdiction over a timely action under the Quiet Title Act, 28 U.S.C. § 2409a; the Tucker Act, 28 U.S.C. § 1491; and probably general federal question jurisdiction under 28 U.S.C. § 1331 (putting sovereign immunity to one side for the moment). Because there is no need to assert ancillary jurisdiction to review the underlying settlement in federal court, *West Virginia Oil* is not on point, even to the extent that it was ever good law in the first place.[2]

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[2] Our *West Virginia Oil* opinion relies solely on an apparent misreading of Supreme Court precedent. In *West Virginia Oil*, the court confused the history of independent actions and the common law predecessors to the separate actions of Fed. R. Civ. P. 60(b). Independent actions are distinct, and "should under no circumstances be confused with ancillary common law and equitable remedies, or their modern substitute, the 60(b) motion." *Bankers Mortgage*, 423 F.2d at 78. The *West Virginia Oil* court simply cited a Supreme Court case that found ancillary jurisdiction for the precursor to Rule 60(b) motions, and held that there was similar ancillary jurisdiction in independent actions.

The *West Virginia Oil* court relied on *Pacific Railroad of Missouri v. Missouri Pacific Railway Co.*, 111 U.S. 505, 522, 4 S. Ct. 583, 592, 28 L. Ed. 2d 498 (1884), which involved a bill in equity to vacate a judgment on the basis of fraud. The bill in equity in that case was a bill of review (one of the forebears of

My concern over the characterization of this suit as independent or ancillary is not as serious as my other concerns: waiver of sovereign immunity and the proper reach of the majority opinion. The United States is, of course, immune from suit without its consent, *Loeffler v. Frank*, 486 U.S. 549, 554, 108 S. Ct. 1965, 1969, 100 L. Ed. 2d 549 (1988), and we are to construe waivers of sovereign immunity "strictly in favor of the sovereign." *United States Dep't of Energy v. Ohio*, 503 U.S. 607, 615, 112 S. Ct. 1627, 1633, 118 L. Ed. 2d 255 (1992). Beggerly can cite no statutory waiver of sovereign immunity in this case, either in the original action or in the independent action. The majority bypasses the question of sovereign immunity by holding that "governmental consent is not required to bring an independent action in the same court as the original action[,]" citing the Second Circuit's opinion in *Weldon v. United States*, 70 F.3d 1, 4 (2d Cir. 1995). Regardless of the equities of any individual case, governmental consent is always re-

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Rule 60(b)), not an independent action in equity. *Zegura*, 104 F.2d at 35 (characterizing the bill in *Pacific Railroad* as a "bill of review"), therefore it has little or no precedential force for independent actions. A bill of review, like a Rule 60(b) motion, had to be brought in the court that rendered judgment and was essentially a request that the court reopen the judgment to reverse or correct a final decree. Wright, Miller & Kane, Federal Practice & Procedure: Civil § 2867 at 394. The unremarkable fact that a motion to reopen a judgment enjoys ancillary jurisdiction therefore should not disturb our precedents holding that independent actions in equity are founded upon an independent and substantive equitable jurisdiction. *Bankers Mortgage*, 423 F.2d at 78. I agree with the *Bankers Mortgage* court, and apparently the Supreme Court in *Kokkonen*, that it is important not to confuse the two conceptually distinct avenues for review.

quired as a prerequisite to federal jurisdiction. *Loeffler*, 486 U.S. at 554.

The Second Circuit's opinion in *Weldon* is not to the contrary. Although the Second Circuit in *Weldon* agrees with the majority that independent actions are "continuations" of the original actions they challenge, the court does not claim that sovereign immunity is unnecessary. In *Weldon*, the parties sued under the Federal Tort Claims Act in the original suit, which constituted a statutory waiver of sovereign immunity. 70 F. 3d at 2. The *Weldon* court held that, because the independent action was essentially a continuation of the original suit, the government's waiver of sovereign immunity in the original action should continue to bind the United States in the subsequent challenge. *Id.* *Weldon* does not suggest that waiver is unnecessary, only that it may be continued from the original suit. So even if we were to find in the instant case that independent actions should be considered a continuation of the original actions they challenge (a point I still dispute), there was no waiver of sovereign immunity in the original action for us to continue. Of course, we cannot equitably waive sovereign immunity on behalf of the government; therefore we do not have jurisdiction to consider this suit.[3]

My final concern is that the majority reaches issues not before us in this opinion. Even if there were a waiver of sovereign immunity in this case, we would have no jurisdiction to reach the merits of

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[3] Presumably a timely challenge to the original action under the Quiet Title Act or the Tucker Act, each of which involves a statutory waiver of immunity, would not suffer from this infirmity of the independent action in equity.

Beggerly's cross motion for summary judgment, the validity of the Boudreau grant, or the ownership of Horn Island, as the majority does. These issues are fraught with difficult fact questions that must be decided by the district court, which alone has jurisdiction to consider them. Moreover, the majority should not have reached those issues on the incomplete summary judgment record before us. Therefore I respectfully dissent.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action No. 1:94-CV-264RR

CHRIS BEGGERLY, ET AL., PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

[Filed: Aug. 17, 1995]

MEMORANDUM ORDER

This matter is before the Court on Defendant's Motion to Dismiss and Plaintiffs' Motion for Summary Judgment.

Background

On April 3, 1950, Clark M. Beggerly Sr. (now deceased) purchased for $51.20 approximately 626 acres on Horn Island[1] at a delinquent-tax sale at the Jackson County Courthouse. **See** Complaint at 2-3; Plaintiffs' Exh. A. At the same sale, Beggerly and a friend, A.E. Hurd, purchased for $31.25 approximately 225 acres on Horn Island, which they later divided.

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[1] Horn Island is located in the Gulf of Mexico approximately 13 miles southwest of Pascagoula, Mississippi. The island is approximately 14 miles in length and 1/2 to 3/4 mile in width.

See Complaint at 3; Plaintiffs' Exh. B. This division left Beggerly with two tracts—the 626-acre tract and a 103-acre tract (approximation). **See** Plaintiffs' Memorandum Brief in Support of Motion for Summary Judgment at 1 (hereinafter "Plaintiffs' Brief"); Defendant's Sur-Response at Exh. A. Through conveyances, Beggerly's children (hereinafter "Beggerly" unless otherwise noted) inherited the property in 1971. **See** Plaintiffs' Exh. 3, at 2 (Affidavit of Chris Beggerly).

In that same year, the United States Congress established the Gulf Islands National Seashore "[i]n order to preserve for public use and enjoyment certain areas possessing outstanding natural, historic, and recreational values." 16 U.S.C. sec. 459(h). This national seashore would include the barrier islands of Ship, Petit Bois, and Horn upon acquisition through purchase or other necessary means. **Id.**

In 1974, the National Park Service ("NPS") offered Beggerly $156,500.00 for the 626-acre tract based upon an appraisal of $156,000.00. Beggerly accepted the offer. **See** United States' Memorandum in Support of Motion to Dismiss at 1 (hereinafter "United States' Memorandum"); Plaintiffs' Exh. 3, at 7.[2] But the deal

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[2] Chris Beggerly notes that the offer concerned only his brother, in whose name the 626-acre tract was titled:

> After three or four hours of talking and going back and forth, a deal was reached for them (U.S. Government) to buy Raleigh's part of the property . . . . Raleigh signed a contract to sell and I witnessed it . . . . Before going to this meeting I had talked with Raleigh about holding out, but he . . . had decided that he needed to get rid of this problem and not have to face the on-going bother that was caused by dealing with the government with this land. As I said all along, we have always

fell through after NPS learned through an "exhaustive search of the records of the [U.S. Department of Interior] Bureau of Land Management's Eastern States Office" that Beggerly's property had never been patented by the United States Government "and had at all times been the property of the United States." **See** United States' Memorandum at 1-2. Thus, in 1979, the United States filed a Complaint to quiet title.[3] **See** Defendant's Exh. A. Three years later, the United States and Beggerly reached a settlement. The United States paid Beggerly $208,175.87. **Id.** at 2. The United States based its offer on appraisals for the 626-acre tract ($156, 500.00) and the 103-acre tract ($27,125.00); the offer also accounted for Beggerly's attorney's fees and other costs. **See** Defendant's Sur-Response at Exh. "A."

Chris Beggerly explains why the family agreed to settle:

> As we got close to trial I thought we had a good case, but [James] Martin [his attorney] told us that we would not be able to win because we could not prove that we had good patents. The government came up with some money and everybody decided to settle. I didn't want any part of it, but finally had to agree with my lawyer told me I had no choice.

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worked together and once I realized that's what was best for him, then that suited me.

See Plaintiffs' Exh. 3, at 7.

[3] The quiet-title action involved numerous defendants in addition to Beggerly. **See** United States' Exh. A (**United States v. Adams, et. al.**).

See Plaintiff's Exh. 3, at 10.[4]

In accordance with the settlement terms, Magistrate Judge John M. Roper issued the "Judgment and Order":

> This matter having come before the Court for a hearing and the Court having considered the evidence presented and the terms of a stipulation for Settlement . . . ;
>
> IT IS ORDERED that judgment is hereby entered in favor of the United States, and title to all lands on Horn [Island] . . . is quieted in the United States . . . ;
>
> FURTHER ORDERED that all defendants and their heirs are permanently enjoined from asserting any adverse claims to the subject property . . . ;
>
> FURTHER ORDERED that the United States has title in fee simple absolute to and full rights of possession of the subject property.

See Defendant's Exh. C.

Judge Roper's Order notwithstanding, Beggerly continued to research whether a patent had ever been issued for the Horn Island property.[5] In 1994,

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[4] According to the Complaint, Beggerly decided to settle upon "having no hope of producing the all important grant or patent by the trial date" and "[realiz[ing] the futility of going to trial." **See** Complaint at 10.

[5] "Along the way I [Beggerly] wrote letters to Presidents Carter, Reagan and Bush, Secretaries of the Interior, Andrus Watts and Lujon [**sic**] and many other federal and state officials and employees. From time to time someone would try to be helpful, but most of the time they told me that since I didn't

after thirteen or more years of research, Beggerly filed a Complaint seeking to have the settlement agreement—as well as Judge Roper's Judgment and Order—set aside. Beggerly contends that newly discovered evidence—a grant predating the Louisiana Purchase and made by the Governor General of Spanish Louisiana to Catalina Boudreau—validates his claim to the Horn Island property.[6]

Beggerly seeks to have the settlement agreement and judgment set aside on the bases of fraud, mutual

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have a patent, there was nothing they could do." Plaintiffs' Exh. 3, at 10-11 (affidavit of Chris Beggerly).

Beggerly's correspondence with government officials has been less-than-cordial:

> Justice in our system is a damn joke. I got this case in Dan Quayle Compentiency [**sic**] Council also. They dropped it? I got the shaft again. Lujon [**sic**] this is in the hands of your people, if they aren't lying too, so you got to them get the facts and if you've got guts enough call me at 601-845-6742.

Letter from Chris Beggerly to Interior Secretary Manual Lujan and copied to "President George Bush, Vice President Dan Quayle, Senator Thad Cochran, Congressman Sonny Montgomery, Senator Trent Lott, John Stossell [of ABC's] 20/20, American Legion [and] Christiania [**sic**] Clark" (dated Sept. 25, 1992), **quoted in** Defendant's Sur-Response at Exh. B.

[6] Prior to filing the Complaint, Beggerly requested that the Bureau of Land Management ("BLM") reconsider the validity of his title to the Horn Island property in light of this newly discovered Spanish land grant. Through a lengthy response, BLM explained "[t]here is no affirmative evidence that the Spanish land grant you provided was ever properly confirmed and without such evidence the 1982 judgment stands and BLM is without power to issue a patent." **See** Plaintiff's Exh. 3(c). Notably, a copy of this "Spanish land grant" has not been made a part of the record or been provided to the United States. **See** United States' Sur-Response at 3-4.

mistake, and inverse condemnation. Beggerly also seeks "not less than $14,500 per acre plus interest and attorney's fees."

Jurisdiction

Beggerly bases jurisdiction, which is disputed to the extent noted in this Memorandum Order, on 28 U.S.C. sec. 1331 "because it arises under the Constitution, laws, and treaties of the United States." **See** Complaint at 1. Beggerly also contends that "this Court has jurisdiction because this action is ancillary to the action filed by the United States in 1979 in **United States v. Adams, et. al.**"[7] **Id.**

Discussion

Rule 60 of the Federal Rules of Civil Procedure provides the means through which an aggrieved party may seek relief from a judgment or order. **See McDonald v. Oliver**, 642 F.2d 169, 171 (5th Cir. 1981). The rule provides, in pertinent part, that:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2)

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[7] In his Memorandum Brief in Support of Motion for Summary Judgment, Beggerly relies upon jurisdictional grounds not relied upon in his Complaint. **See, e.g.**, Compare Complaint at 1 (relying on 28 U.S.C. sec. 1331 and ancillary jurisdiction), **with** Plaintiff's Memorandum Brief at 19-20 (relying on 28 U.S.C. sec. 2409(a)). In view of Beggerly's failure to amend his pleadings, this Court need not address the issue or issues raised for the first time in his Motion for Summary Judgment—**i.e.**, whether 28 U.S.C. sec. 2409(a) or other grounds not relied upon in the Complaint provide relief from the 1982 judgment. **See** Fed. R.Civ.P. 8(a) & 15.

> newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud . . . , misrepresentation, or other misconduct of an adverse party . . . . The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken . . . . [T]he procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

"Except in extraordinary circumstances . . . , the law favors an end to lawsuits rather than a free reopening and retrial of them."[8] **Lockwood v. Bowles**, 46 F.R.D. 626, 633 (D.D.C. 1969), **quoted in Rozier v. Ford Motor Co.**, 573 F.2d 1332, 1338 n.3 (5th Cir. 1978).

This Court need not address the merits of Beggerly's allegations of fraud,[9] mistake,[10] and newly

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[8] As aptly noted by the Fifth Circuit nearly three decades ago: "Federal Courts have held under a variety of circumstances that a settlement agreement once entered into cannot be repudiated by either party and will be summarily enforced." **Cia Anon Venezolana de Navegacion v. Harris**, 374 F.2d 33, 35 (5th Cir. 1967) (citing cases), **quoted in Howard v. Chris-Craft Corp.**, 562 F.Supp. 932, 936 (E.D. Tex. 1982) (citing cases from other circuit courts).

[9] The party seeking to set aside a settlement agreement or judgment on grounds of fraud "faces a stiff standard of proof." **Howard v. Chris-Craft Corp.**, 562 F.Supp. 932, 937 (E.D. Tex. 1982). The Seventh Circuit articulated this standard:

> One who relies upon fraud, misrepresentation or concealment [to set aside a settlement agreement] must sufficiently allege facts and prove it. The allegations and

discovered evidence[11] because of their untimeliness.[12] On December 3, 1982, Beggerly signed the settlement

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> proof must be **clear and convincing** and must show (1) a representation, (2) its falsity, (3) its materiality, (4) the speaker's knowledge of the falsity or ignorance of the truth, (5) his intent that it should be acted on by the person and in the manner reasonably contemplated, (6) the hearer's ignorance of its falsity, (7) his reliance on its truth, and (8) his right to rely thereon.

Clarion Corp. v. American Home Products, 494 F.2d 860, 864-65 (7th Cir. 1974), **quoted in Howard**, 562 F.Supp. at 937. In the case **sub judice**, Beggerly has wholly failed to discuss his allegations of fraud in specific terms of these critical elements. **See also** footnote 12, **infra.**

[10] **See generally** 7 J. Moore & J. Lucas, Moore's Federal Practice sec. 60.22 (1991 & Supp.) (discussing case law on this basis of relief under Rule 60(b)(1)).

[11] Under Rule 60(b)(2), "a party can obtain relief from a judgment based on newly discovered evidence only if that evidence is "(1) material and not merely cumulative, (2) could not have been discovered prior to [judgment] through the exercise of reasonable diligence, and (3) would probably have changed the outcome.'" **Dempsey v. Associated Aviation Underwriters**, 147 F.R.D. 88, 90 (E.D. Penn. 1993) (quoting **Bohus v. Beloff**, 950 F.2d 919, 930 (3d Cir. 1991)). Though the arguments of his briefs seem, at times, to be couched in language reflective of Rule 60(b)(2), Beggerly did not cite "newly discovered evidence" as a basis for his Complaint. **See, e.g.**, Plaintiffs' Brief at 3 ("Finally, in 1992, [Beggerly] found a 1781 grant of Horn Island . . . in the National Archives."). This notwithstanding, a careful review of the record leads this Court to the conclusion that Beggerly would be hardpressed to meet the stringent requirements of this Rule—much less succeed in overcoming the timeliness issue.

[12] Though unnecessary, this Court has carefully reviewed the record to determine whether Beggerly has provided any basis in fact or in law to warrant an order setting aside the 1982 settlement agreement and judgment. This review has led to

agreement and Judge Roper issued the judgment and order. Nearly 12 years later—on June 1, 1994—Beggerly filed his Complaint seeking to set aside the agreement and judgment. Thus, Beggerly filed his Complaint nearly 11 years beyond Rule 60(b)'s one-year limitations period and is therefore untimely. Nothing in the record before this Court provides Beggerly with an exception to this conclusion.[13] **See,**

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the conclusion that Beggerly's allegations are devoid of sufficient evidentiary support. **See Teal v. Eagle Fleet, Inc.**, 933 F.2d 341, 347 (5th Cir. 1991) ("district court enjoys considerable discretion when determining whether . . . Rule 60(b) standards" have been satisfied) (citing cases); **see also Wilson v. Johns-Manville Sales Corp.**, 873 F.2d 869, 871 (5th Cir. 1989) (applying abuse-of-discretion standard) (citing **Schauss v. Metals Depository Corp.**, 757 F.2d 649 (5th Cir. 1985)); **Pagan v. American Airlines, Inc.**, 534 F.2d 990, 993 (1st Cir. 1976) ("The principle that a motion to set aside a judgment is addressed to the sound discretion of the trial court and will not be overturned absent an abuse of discretion is firmly established.") (citing cases from other jurisdictions).

The bottom line seems to be—that Beggerly's only basis for having the settlement agreement and judgment set aside is his disputed belief that he can now establish the validity of his title to the Horn Island property. Unfortunately for Beggerly, "[a] settlement [agreement or judgment] will not be set aside . . . merely because one party's case becomes stronger after the settlement is concluded." **Howard v. Chris-Craft Corp.**, 562 F.Supp. 932, 937 (E.D. Tex. 1982). The foregoing aside, the record is—as noted previously—devoid of evidence which would lead this Court to agree with Beggerly's misguided belief.

[13] Although he clearly seems to rely on Rules 60(b)(1)—(3) in his Complaint to set aside the 1982 judgment and settlement agreement, Beggerly "clarifies" in his Motion for Summary Judgment that he is seeking relief through an "independent action in equity." **See** Plaintiff's Memorandum Brief at 4. Assuming this were the case, this Court finds that this basis is

e.g., Wilson v. Johns-Manville Sales Corp., 873 F.2d 869, 871 (5th Cir. 1989) (discussing "fraud on the court" exception); **Liljeberg v. Health Servs. Acquisition Corp.**, 108 S.Ct. 2194, 2204 (1988) (discussing Rule 60(b)(6)'s "reasonable time" limitation period).

In addition to the foregoing reasoning, this Court rejects Beggerly's Complaint because "[a] party seeking rescission must attempt to restore the **status quo ante**—that is, to return the parties to the positions they held just before they entered into the agreement." **See Grillet v. Sears, Roebuck & Co.**, 927 F.2d 217, 220-21 (5th Cir. 1991) (citing **United States v. Texarkana Trawlers**, 846 F.2d 297, 304 (5th Cir.), **cert. denied**, 488 U.S. 943 (1988)). Beggerly has made no such attempt and, therefore, is deemed to have ratified the settlement agreement. **Id.** at 221. (citing cases); **see also Fleming v. United States Postal Serv. AFM O'Hare**, 27 F.3d 259, 260-61 (7th Cir. 1994).[14]

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substantively and procedurally deficient. **See, e.g., Humanetics, Inc. v. Kerwit Medical Prods., Inc.**, 709 F.2d 942, 943 (5th Cir. 1983) (discussing "indispensable elements" of this "rare" action); **see also Bankers Mortgage Co. v. United States**, 423 F.2d 73, 79 (5th Cir.), **cert. denied**, 399 U.S. 927 (1970). Indeed, this cause of action—filed 12 years after final judgment was rendered and the settlement agreement signed—is untimely under the doctrine of laches as applied to the facts. **See, e.g., Humanetics, Inc.**, 709 F.2d at 943 ("[T]he doctrine of laches is applicable and undue delay may bar relief."); **In re West Texas Marketing Corp.**, 12 F.2d 702 (5th Cir. 1954) ("There is no time limit on when an independent action may be brought, but the doctrine of laches is applicable and undue delay may bar relief.").

[14] This Court could also reject Beggerly's Complaint on the simple basis that Judge Roper's judgment and order should be

Finally, this Court rejects Beggerly's inverse-condemnation claim that "[t]he entry of judgment on December 3, 1982 . . . constituted a[n unconstitutional] taking of [his] property without the payment of just compensation." **See** Complaint at 17. This Court rejects this claim on jurisdictional grounds. The Tucker Act vests concurrent jurisdiction in the United States Court of Federal Claims and the federal district court over any "claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States." 28 U.S.C. sec. 1346(a)(2); **see also Amoco Production Co. v. Hodel**, 815 F.2d 352, 358-59 (5th Cir. 1987). "If the claim exceeds $10,000, the Tucker Act grants exclusive jurisdiction to the Claims Court [now the Court of Federal Claims]." **Amoco Produc-**

"given the finality accorded under the rules of claim preclusion." **See Russell v. SunAmerica Securities, Inc.**, 962 F.2d 1169, 1173 (5th Cir. 1992) ("[T]his Court has long recognized that a consent judgment is a judgment on the merits, and is normally 'given the finality accorded under the rules of claim preclusion.'") (quoting **Kaspar Wire Works, Inc. v. Leco Eng'g & Mach., Inc.**, 575 F.2d 530, 538 (5th Cir. 1978)). The four elements of claim preclusion or res judicata are evidenced: (1) The parties are identical in both the 1982 and 1994 actions (**i.e.**, the United States and Beggerly); (2) The prior judgment was rendered by a court of competent jurisdiction (**i.e.**, by Judge Roper on behalf of the U.S. District Court for the Southern District of Mississippi); (3) Judge Roper's decision constituted a final judgment on the merits (**see SunAmerica Securities, Inc.**, 962 F.2d at 1173); and (4) The cause of action is the same (**i.e.**, both 1982 and 1994 causes of action involved the question of ownership over Horn Island property). **See id.** at 1172.

tion Co., 815 F.2d at 358 (citing 28 U.S.C. sec. 1491(a)(1)); **see also Graham v. Henegar**, 640 F.2d 732, 734-35 & n.6 (5th Cir. 1981) (citing cases from other courts of appeal). Application of this law to the facts clearly leads to the conclusion that the Court of Federal Claims has exclusive jurisdiction over Beggerly's inverse-condemnation claim.[15]

In sum, Beggerly's complaint, for the most part, is untimely. In the alternative, this Court's careful review of the record has yielded little or no evidence to support Beggerly's allegations of fraud, mutual mistake, and so forth. The United States acted in good faith in the settlement of this case. **See Cia Anon Venezolana de Navegacion v. Harris**, 374 F.2d 33, 35 (5th Cir. 1967) ("Where the parties, acting in good faith, settle a controversy, the courts will enforce the compromise without regard to what the result might, or would have been, had the parties chosen to litigate rather than settle.") (quoting **Hennessy v. Bacon**, 137 U.S. 38). Indeed, the United States sat "in the driver's seat" and could have refused to pay for what it already owned.[16] Instead, the United States decided

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[15] The time for filing suit in the Court of Federal Claims has presumably expired. "Every claim of which the . . . Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues." 28 U.S.C. sec. 2501; **see also Steel Improvement & Forge Co. v. United States**, 355 F.2d 627, 631 (Ct. Cl. 1966) ("It is axiomatic that a cause of action for an unconstitutional taking accrues at the time the taking occurs.") (citing cases).

[16] On two separate occasions, Beggerly employed an attorney to evaluate the validity of his title to the Horn Island property. In 1976, Beggerly's attorney, Lawrence Corban, advised him that no patents for Horn Island had ever been issued by the United States and that he had "no valid claim to owner-

to provide Beggerly with a "six-figure" windfall, which Beggerly accepted[17] and which will remain undisturbed.

IT IS THEREFORE ORDERED AND ADJUDGED that the Defendants' Motion to Dismiss is hereby **GRANTED** and the Plaintiffs' Motion for Summary Judgment be **DENIED**.

SO ORDERED AND ADJUDGED this the *16th* day of *Aug.*, 1995.

/s/ DAN M. RUSSELL, Jr.
DAN M. RUSSELL., Jr.
UNITED STATES
DISTRICT JUDGE

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ship of the property." **See** Defendant's Sur-Response at Exh. "A" (affidavit of Thomas Piehl). In 1982, during settlement negotiations with the United States, attorney James Martin advised Beggerly that he could not "win" his case "because [he] could not prove that [he] had good patents." **See** Plaintiffs' Exh. 3, at 10 (affidavit of Chris Beggerly).

[17] **See** Plaintiffs' Exh. 3, at 10 (where Beggerly concedes through sworn affidavit that he "agreed" with his attorney's advice that he "had no choice" but to accept the United States' settlement proposal).

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action No. 1:94CV264RR

CHRIS BEGGERLY, ET AL., PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, DEFENDANT

[Filed: Aug. 25, 1995]

ORDER OF DISMISSAL

This Court, having considered the Motion to Dismiss of the United States of America (Government), filed herein on January 17, 1995, and the Motion for Summary Judgment of the plaintiffs filed herein on March 17, 1995, and having entered its Memorandum Order pertaining to those motions on August 16, 1995, which Memorandum Order is incorporated herein by reference, does, for the reasons stated in that Memorandum Order, further, find that the relief sought by the Government's motions to dismiss should be granted and the relief sought by the plaintiffs' Motion for Summary Judgment should be denied. Further, there are some non-dispositive motions filed herein, including a Motion to Amend (filed on July 12, 1995) and a Motion to Strike Sur-Response or in the Alternative to File a Response (filed on August 14, 1995),

both filed by the plaintiffs, that have not been ruled upon by this Court. However, because of the findings and rulings herein and in the Memorandum Order, the relief sought by all pending non-dispositive motions has been rendered moot and should be denied.

IT IS, THEREFORE, ORDERED AND ADJUDGED as follows:

1. The relief sought by the United States of America in its aforesaid Motions to Dismiss is hereby granted; and, accordingly, the complaint and all counts therein are hereby dismissed, with prejudice;

2. The relief sought by the plaintiffs in their aforesaid Motion for Summary Judgment is hereby denied; and

3. The relief sought by the plaintiffs and/or the defendant by all pending, non-dispositive motions, including the aforesaid Motion to Amend and the aforesaid Motion to Strike Sur-Response or in the Alternative to File a Response, both filed by the plaintiffs, is hereby denied.

SO ORDERED AND ADJUDGED, this 22nd day of Aug. ,1995.

/s/ DAN M. RUSSELL, Jr.
DAN M. RUSSELL., Jr.
UNITED STATES
DISTRICT JUDGE

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action No. 1:94-CV-264RR

CHRIS BEGGERLY, ET AL., PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

[Filed: Sept. 21, 1995]

MEMORANDUM ORDER

This matter is before the Court on Plaintiff's Motion for Rehearing.

Background and Jurisdiction

For the sake of brevity, reference is made to this Court's Memorandum Order signed on August 16, 1995, for the background of this case and the grounds for jurisdiction.

Discussion of Motion

For the most part, the Plaintiffs (hereinafter "Beggerly") assert that their Motion for Rehearing should be granted because:

> The Court's Memorandum Order was issued by Judge Dan M. Russell, Jr., though the parties had consented to an order referring the case to a United States Magistrate Judge on March 16,

> 1995 . . . and an order of reference, signed by Judge Dan M. Russell, Jr., was entered on March 17, 1995. . . . The order of reference expressly provides "that the above-captioned matter be referred to United States John M. Roper for the conduct of *all* further proceedings and entry of judgment." . . . Accordingly, all filings after that date were submitted to Magistrate Judge Roper including the Plaintiffs' response to the pending motion and briefs. However, notwithstanding the entry of the referral order, and without any notice, explanation or subsequent order of transfer, Judge Russell decided the pending motions and entered the Memorandum Order on August 16, 1995, five months after "all further proceedings" were transferred to Magistrate Judge Roper.

See Motion for Rehearing at 1-2.

The Defendant, the United States, responds that Beggerly's Motion is "frivolous" and another "example of the flagrant disregard plaintiffs have exhibited for the Court's Order of December 3, 1982." **See** Response at 1.

This Court does not dispute that both parties signed a "Consent to Jurisdiction by a United States Magistrate Judge" on March 16, 1995. **See** Plaintiff's Exh. A. Moreover, this Court does not dispute that it signed an "Order of Reference" on March 17, 1995. **See** Plaintiffs' Exh. B. However, a long-standing "policy" or "rule" of the Southern District of Mississippi—of which Beggerly should have been well aware—has dictated that all dispositive motions (**e.g.**, Motions to Dismiss and for Summary Judgment) shall be handled by the district judge and not by the magistrate judge "even though consents are obtained."

Chief Judge William H. Barbour, Jr. explained the basis of this local rule in a March 1994 memorandum directed to "all District Judges and Magistrate Judges" of the Southern District: The Magistrate Judges have little "time available to do any trial work" in view of the "substantial additional load [they] now have on them because of having to conduct the case management conferences and because they do not have sufficient staff to handle dispositive motion work in the consent cases." Thus, "[t]o impose upon them the dispositive motion work . . . would be unfair."

In accordance with the foregoing rule, this Court handled the Plaintiffs' Motion for Summary Judgment and the Defendant's Motion to Dismiss—denying the former and granting the latter. This decision brought the case to a close—thereby making a subsequent reference to the magistrate judge for trial unnecessary. Beggerly's surprising lack of "notice" of this Court's handling of the dispositive motions is of no consequence to the outcome of this case. This Court would have handled the dispositive motions whether Beggerly had notice—or not.

This Court also rejects Beggerly's other bases asserted in his Motion for Rehearing. One basis—this Court's alleged failure to address Beggerly's Motion to Amend—is frivolous. This Court denied the Motion in its Order of Dismissal.[1] The other basis—this

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[1] In reconsidering this issue, this Court again denies the Motion to Amend on procedural grounds. Procedurally, Beggerly filed the Motion in an untimely manner. Beggerly filed the Motion on July 13, 1995—nearly six months after the United States filed its Motion to Dismiss (January 19, 1995) and four months after Beggerly filed its own Motion for Summary Judgment (March 20, 1995). By the time Beggerly had filed

Court's alleged failure to address Beggerly's Motion to Strike Defendant's Sur-Response—is also frivolous. Again, this Court denied the Motion in its Order of Dismissal.[2]

IT IS THEREFORE ORDERED AND ADJUDGED that the Plaintiffs' Motion for Rehearing is hereby **DENIED.**

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the Motion to Amend, this Court had decided the Motions to Dismiss and for Summary Judgment—although the decision had not yet been published. In short, Beggerly had "put the cart before the horse" by asserting the jurisdictional ground in its Motion for Summary Judgment before seeking this Court's permission to amend its Complaint. Beggerly's belated attempt to remedy the cart-horse scenario could not forestall this Court's decision on the issue which had already been made.

The foregoing notwithstanding and assuming **arguendo** that the Motion to Amend were granted, this Court would nonetheless reject Beggerly's jurisdictional argument on substantive grounds. Through his Motion to Amend, Beggerly sought to add the Quiet Title Act (28 U.S.C. sec. 2409(a)) as a new ground for jurisdiction. **See** Brief in Support of Plaintiffs' Motion to Amend. at 1. Inclusion of this Act, however, would have had no impact on the outcome of this case under the facts and law. In short, this Court concurs in the United States' assessment of Beggerly's argument concerning the Quiet Title Act. **See** United States' Memorandum Brief in Response to Plaintiffs' Motion for Summary Judgment at 20-22.

[2] The substance of the United States' Sur-Response had absolutely no bearing on this Court's decision to grant the Motion to Dismiss. Indeed, the Court had already reached a decision by the time the United States had filed its Sur-Response.

SO ORDERED AND ADJUDGED, this the 20th day of Sept.,1995.

/s/ DAN M. RUSSELL, Jr.
DAN M. RUSSELL., Jr.
UNITED STATES
DISTRICT JUDGE

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-60625

CHRIS W. BEGGERLY; JAMES R. BEGGERLY; CLARK M. BEGGERLY; VELMA B. GARNER; SUZANNE REED; DAVID REED, PLAINTIFFS-APPELLANTS,

v.

UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

[Filed: July 28, 1997]

On Petition for Rehearing and Suggestion for Rehearing En Banc

Before: POLITZ, Chief Judge, EMILIO M. GARZA and STEWART, Circuit Judges.

PER CURIAM:

Other than as reflected in the substituted opinion, the petition for rehearing is DENIED. No member of this panel nor judge in regular service on the court having requested that the court be polled on

rehearing en banc,* the suggestion for rehearing en banc is also **DENIED.**

ENTERED FOR THE COURT:

/s/ HENRY A. POLITZ
HENRY A. POLITZ, Chief Judge

Emilio M. Garza, Circuit Judge, dissenting.

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* FRAP and Local Rule 35.

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action No. S79-0338(R)

UNITED STATES OF AMERICA, PLAINTIFF

v.

ANDREW J. ADAMS, JR., ET AL., DEFENDANTS

[Filed: Dec. 3, 1982]

JUDGMENT AND ORDER

This matter having come before the Court for a hearing and the Court having considered the evidence presented and the terms of a Stipulation for Settlement dated December 3, 1982, and the Court having determined that judgment should be entered quieting title in favor of the United States with regard to all lands and interests in lands on Horn and Petit Bois Islands which defendants have or may have claimed and which are more particularly described in the Complaint, Exhibit A attached hereto;

IT IS ORDERED that judgment is hereby entered in favor of the United States, and title to all lands on Horn and Petit Bois Islands, which lands are described in the Complaint, Exhibit A attached hereto, is quieted in the United States of America; and

FURTHER ORDERED that all defendants and their heirs are permanently enjoined from asserting any adverse claims to the subject property described in the Complaint, Appendix A attached hereto; and it is

FURTHER ORDERED that the United States has title in fee simple absolute to and full rights of possession of the subject property.

IT IS FURTHER ORDERED that no attorneys' fees against the United States be allowed and that each party bear their own costs.

ORDERED AND ADJUDGED this *3rd* day of December, 1982.

/s/ JOHN M. ROPER
JOHN M. ROPER
UNITED STATES
MAGISTRATE

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action No. S79-0338(R)

UNITED STATES OF AMERICA, PLAINTIFF

v.

ANDREW J. ADAMS, JR., ET AL., DEFENDANTS

[Filed: Dec. 7, 1982]

STIPULATION AND SETTLEMENT

Comes now the United States of America through its undersigned attorneys and defendants, Arthur Baker, Ralph Baker, Walter N. Wentzel, L. M. Page and Francis Stanovich, by and through their undersigned attorney, Lyle M. Page; David A. Doherty, Adalaide H. Doherty, Mrs. A. E. Hurd, Sr., Mrs. Anne H. Bradley, Mrs. Jane H. Sims, Mrs. Irene H. Hawley, Alfred E. Hurd, Jr., Louis W. Hurd, Mrs. Linda H. Smith and Mrs. Faye H. McCarey, by and through their undersigned attorney, Wynn E. Clark; W. B. Jones, Pro Se; First National Bank of Jackson, Trustee of Paul Chambers Mineral Trust, J. S. Love, Jr., M. B. Puckett, Petit Bois, Inc., J. R. Beggerly, Chris W. Beggerly, Velma B. Garner, Norma Reed and Clark M. Beggerly, Jr., by and through their undersigned attorney, James L. Martin; State of

Mississippi, by and through its undersigned attorney, Mack Cameron; E. J. Delcambre, Ronnie Strahan and Ellison Hebert, by and through their undersigned attorney, C. W. Ford; Fred Lemon, by and through his undersigned attorney, Russell Thompson; Lou Ann Gilly, Frances Wade Gilly and Ola Pitalo, by and through their undersigned attorney, Jacob D. Guice; Jimmy L. McClellan and Aimee McClellan, Heirs of Carroll E. Williams and Allen D. and Betty Rooke, by and through their undersigned attorney, George Morse; Marlene Gillich and Frank Schenck, by and through their undersigned attorney, Keith Pisarich; Raymond Bass, Bartlo Hunt, Anthony J. Bertucci, Grace Bertucci and Noel J. Skrmetti, by and through their undersigned attorney, Robert A. Acevedo; Mrs. E. Regan Berry, Beverly C. and Johnny Romeo, Grover Graham, Jr., Thomas J. Wiltz, Margaret M. Brou, Miss Jonnie Parkinson, C. H. Eisendrath, Dr. Clay Easterly, Donald F. Santa Cruz, Jr., et ux, Jerry Covich, Jr., and Shannon R. Covich, Victor B. Pringle, Laz Quave, Helen George Leonard, A. W. Covacevich, Wakeman B. Curtis, Ganavieve Curtis, Naif Jordan, Caroline Bell Leader and Michael L. and Suzanne Fondren, by and through their attorney of record, Thomas J. Wiltz; and Dan Breland, by and through his undersigned attorney, R. L. Netterville; and hereby stipulate and agree as follows:

WHEREAS, this quiet title action was instituted by the filing of a complaint on September 7, 1979, reference to which is made for all purposes; and

WHEREAS the above-named defendants acting by and through their attorneys have stipulated and agreed that they and each of them will submit to the entry of an order in the form as shown by Exhibit A

attached hereto in favor of the United States of America with regard to any and all interests in lands on Horn and Petit Bois Islands which are more fully described in Exhibit B which defendants have or may have claimed and which are the subject of this lawsuit in consideration for the sum of Four Hundred Thousand and no/100 Dollars ($400,000.00) to be deposited in the registry of the Court; and it is further stipulated and agreed that the sum shall be full and just compensation and in full satisfaction of any and all claims of whatsoever nature including attorneys' fees against the United States of America by reason of the settlement of the action; and

The said parties hereby consent to the entry of any and all orders and judgments necessary to effectuate this stipulation and agreement.

GEORGE PHILLIPS
United States Attorney

By

/s/ JERRY A. DAVIS
JERRY A. DAVIS
Assistant United States Attorney

/s/ STEVEN A. HERMAN
STEVEN A. HERMAN
Attorney, Department of Justice

/s/ RALPH GLENN ESKITE
RALPH GLENN ESKITE
Attorney, Department of Justice

/s/ DAVID F. SHUEY
DAVID F. SHUEY
Attorney, Department of Justice

/s/ LYLE M. PAGE
LYLE M. PAGE

/s/ WYNN E. CLARK
WYNN E. CLARK

/s/ BILL JONES
W. B. JONES, Pro Se

/s/ JAMES L. MARTIN
JAMES L. MARTIN

/s/ MACK CAMERON
MACK CAMERON

/s/ C.W. FORD
C. W. FORD

/s/ RUSSELL THOMPSON
RUSSELL THOMPSON

/s/ JACOB D. GUICE
JACOB D. GUICE

/s/ GEORGE MORSE
GEORGE MORSE

/s/ KEITH PISARICH
KEITH PISARICH

/s/ ROBERT A. ACEVEDO
ROBERT A. ACEVEDO

/s/ THOMAS J. WILTZ
THOMAS J. WILTZ

/s/ R. L. NETTERVILLE by ?
R. L. NETTERVILLE

Dated: December 3, 1982

APPENDIX I

1. Rule 60(b) of the Federal Rules of Civil Procedure provides:

> **(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of co-

ram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

2. Section 2409a of Title 28, United States Code, provides in pertinent part:

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. * * *

(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession or control of the real property or any part of it as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.

* * * * *

(g) Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced with twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or

his predecessor in interest knew or should have known of the claim of the United States.